

character issues at the conclusion of the Previous Decisions (see Dallas Amendment),<sup>12</sup> are also matters that arise from Mr. Parker's reliance of the advice of counsel concerning the legal effect and implications of the Previous Decisions.

As demonstrated above, with respect to each of the representations at issue here, Mr. Parker relied on the advice of counsel to interpret the legal effect and implications of the Previous Decisions and to describe them in the exhibits to Question 7. Since decisions concerning the legal effect and implications of the Previous Decisions and the descriptions thereof call, particularly, for the exercise of legal skill and judgment, Mr. Parker's reliance on counsel's advice was clearly reasonable. Under these circumstances, it cannot be concluded that Mr. Parker's reasonable reliance on counsel as to the Previous Decisions constitutes intentional deception by Mr. Parker.

**C. Commission Precedent Supports The Conclusion That Reliance On The Advice Of Counsel Shows A Lack Of Intent To Deceive**

The conclusion that Mr. Parker's reasonable reliance on the legal advice of counsel will not support a lack of candor finding is consistent with the Commission's past practice, policy, and precedent. Thus, for example, in Roy M. Speer, the Commission found that the good faith reliance on a conclusion of law, even if the

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<sup>12</sup> To the extent that Adams takes issue with the specific wording of the Dallas Amendment, that wording was drafted by the attorneys at Brown, Nietert & Kaufman based upon information that had originally come from the Sidley Attorneys. Mr. Parker reasonably accepted Brown, Nietert & Kaufman's drafting of the language of the amendment, which is, in any case, accurate, because no unresolved character issue was pending as of the time the SBB and Mt. Baker applications were dismissed or denied.

conclusion is ultimately found to be incorrect and the reliance misplaced, undercut any inference of intent to deceive. Roy M. Speer, 11 FCC Rcd 18,393 (1996) at ¶ 75 . Similarly, in Fox Television Stations, Inc., the Commission found that the applicant's good faith reliance on counsel's advice as to a matter of law could not support a finding of deceptive intent. Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995) at ¶ 119 .

Recently, in Norcom Communications Corporation, a summary decision was entered on similar circumstances. Norcom Communications Corporation, 15 FCC Rcd 1826 (ALJ 1999). There, the applicant had relied on the advice of counsel with respect to whether its management of stations owned by certain non-profit associations complied with Commission regulations. Id., ¶ 20. The ALJ stated that:

While it is true that reliance on the advice of counsel is not a complete defense to all FCC rule violations, the agency recognized that reliance on the advice of counsel may constitute a mitigating factor when violations relating to a regulatee's character are adjudicated. For example in Fox Television Stations, Inc., the Commission found that Fox's good faith reliance of the advice of counsel involving "a complex area of the law" was an excuse to Fox's alien ownership violations. In this case, Norcom and the Associations were advised by counsel, and believed, that the formation of the Associations' stations complied with all applicable FCC regulations. In light of Commission precedent Norcom's reliance on advice of counsel is deemed to be mitigating in this case.

Id., at ¶ 21. See also Abacus Broadcasting Corp., 8 FCC Rcd 5110 (Rev. Bd. 1993) at ¶ 12 (and cases cited therein) ("Although the Commission is reluctant to excuse an applicant's procedural deficiencies because of the alleged malfeasance of counsel, the Commission has been equally reluctant to impute a disqualifying lack of candor to an applicant where the record shows good faith reliance on counsel." (internal

citations omitted)); Gary D. Terrell, 102 FCC 2d 787 (Rev. Bd. 1985) at ¶ 4 (“Carelessness and a mistake of law are entirely different from an intent to deceive.”)

The Commission has also acknowledged that promoting an applicant’s reliance of the advice of counsel serves important administrative policies. See Fox Television, 10 FCC Rcd at 8501, ¶ 119 n. 68. Thus, the Commission has tried to avoid “creat[ing] and environment in which licensees are discouraged from seeking and following the advice of legal counsel. Id. Penalizing Reading, here, based upon Mr. Parker’s representations made on the advice of counsel would defeat those efforts, finding, effectively, that Mr. Parker should have second guessed his counsel’s decisions and interpretations.

In this case, Mr. Parker relied on counsel’s interpretation of the legal effect and implications of the Previous Decisions. Mr. Parker relied on such advice in good faith and, under the circumstances, such reliance was eminently reasonable.<sup>13</sup> The conclusion that Mr. Parker’s reasonable reliance on the legal advice of counsel, particularly, as here, counsel’s advice concerning matters of a legal nature,<sup>14</sup> will

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<sup>13</sup> In fact, given the impeccable qualifications of Mr. Parker’s attorneys, not only was Mr. Parker’s reliance on their advice reasonable, but it would have bordered upon foolishness for him to second-guess them. (See Wadlow Depo. at 122:16-20 (Adams’ counsel asserts Mr. Wadlow’s qualifications as a communications law expert and seeks to elicit his expert opinion.)

<sup>14</sup> Reading anticipates that Adams may attempt to rely on authority that suggests that an applicant can be held responsible despite the advice of counsel. See RKO General, Inc. v. FCC, 670 F.2d 215, 231 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 (1982) (“[While] it is true that reliance on counsel may render a sever sanction such as disqualification too harsh in some circumstances, . . . advice of counsel cannot excuse a clear breach of duty by a licensee” (internal quotations and citations

not support a lack of candor finding is consistent with the Commission's past practice, policy, and precedent.

## **V. CONCLUSION**

As shown above, the facts as to which there are no genuine issues demonstrate a complete absence of deceptive intent by Mr. Parker which would support a lack of candor finding against him. The representations at issue provide all the information requested by the application forms and are consistent with all the Commission's requirements that can be clearly identified to an ascertainable certainty. They were made in reasonable, good faith reliance upon the advice of counsel, and, consistent with the Commission's past practice, policy, and precedent, such reliance cannot support a misrepresentation / lack of candor finding. For these reasons, this Motion should be granted and summary decision on the lack of candor issue should be entered in favor of Reading.

READING BROADCASTING, INC.

May 18, 2000

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omitted)). Such authority, which principally involves representations or omissions of factual matters that the licensee would have clearly recognized as being incorrect or necessary, is clearly distinct from the cases involving representations on advice concerning matters of a legal nature, e.g., interpretations as to a regulation or, as here, the legal effects of an administrative adjudication.

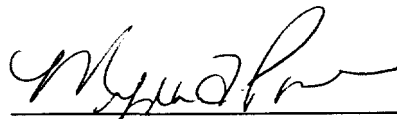
CERTIFICATE OF SERVICE

I, Myra Powe, a secretary in the law firm of Holland & Knight LLP, do hereby certify that a copy of the foregoing Motion For Summary Decision On Misrepresentation / Lack Of Candor Issue, was served, this 18th day of May 1999, via hand delivery, to the following:

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Federal Communications Commission  
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Myra F. Powe



Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Applications of

RELIGIOUS	MM DOCKET NOS. 83-911 to 83-912
BROAD-	MM DOCKET NOS. 83-914 to 83-916
CASTING	MM DOCKET NOS. 83-918 to 83-919
NETWORK	MM DOCKET NOS. 83-921 to 83-923
San Bernardino,	MM DOCKET NO. 83-925
California <i>et al.</i>	MM DOCKET NO. 83-928
	MM DOCKET NO. 83-930

For Construction Permit  
for a New TV Station

**Appearances**

*Morton L. Berfield and Roy W. Boyce* on behalf of Religious Broadcasting Network; *Michael H. Rosenbloom, Richard H. Waysdorf, Paul Y. Seligson, and Rebecca L. Dorch* on behalf of Solano Broadcasting Limited; *James P. Riley, James G. Ennis, Kathleen Quinn Abernathy, and Kathryn Dole* on behalf of Charles E. Walker, *et al.* d/b/a A&R Broadcasting Company, A Limited Partnership; *Ernest T. Sanchez, Geoffrey J. Bentley, Laura Metcalf Klaus, and Danielle R. Srour* on behalf of H. Frank Dominquez, *et al.* d/b/a Buenavision Broadcasters; *John Wells King, John P. Crigler, Lee W. Shubert, James E. Dunstan, and Janice C. King* on behalf of Sandra S. Phillips and the ARW Company d/b/a SSP Broadcasting, A Limited Partnership; *James A. Gammon, Carl J. Fieldsira, Mark W. Amerman, and James E. Meyers* on behalf of Good News Broadcasting Network; *Mark Van Bergh, William M. Barnard, and James K. Edmundson* on behalf of Jose M. Oti d/b/a Sandino Telecasters; *Robert A. Beizer, Richard D. Rochford, Jane D. Woodfin, and William S. Andrews* on behalf of Inland Empire Television; *David F. Tillotson and Craig Iscoe* on behalf of Television 30, Inc.; *Steven A. Lerman and Dennis P. Corbett* on behalf of San Bernardino Broadcasting Limited Partnership; *James J. Popham, Ashton R. Hardy, and William E. Zimsky* on behalf of All Nations Christian Broadcasting, Inc.; *David D. Oxenford and Ann K. Ford* on behalf of Channel 30, Inc.; and *Stephen Yelverton* on behalf of Chief, Mass Media Bureau, Federal Communications Commission.

**INITIAL DECISION OF ADMINISTRATIVE  
LAW JUDGE JOSEPH P. GONZALEZ**

Issued: October 19, 1987; Released: October 30, 1987

**BACKGROUND**

1. This proceeding involves the mutually exclusive applications for a new television station on Channel 30 in San Bernardino, California filed by Religious Broadcasting Network (RBN), Solano Broadcasting Limited (Solano), Charles E. Walker *et al.* d/b/a A & R Broadcasting Company, A Limited Partnership (A&R), H. Frank Dominquez

*et al.* d/b/a Buenavision Broadcasters (Buenavision), Sandra S. Phillips and the ARW Company d/b/a SSP Broadcasting, A Limited Partnership (SSP), Good News Broadcasting Network (Good News), Jose M. Oti d/b/a Sandino Telecasters (Sandino), Inland Empire Television (Inland Empire), Television 30, Inc. (TV-30), San Bernardino Broadcasting Limited Partnership (SBBLP), All Nations Christian Broadcasting, Inc. (All Nations), and Channel 30, Inc. (Channel 30).

2. The applications were designated for hearing by the Chief, Mass Media Bureau, *Hearing Designation Order*, Mimeo No. MM 6506, released September 20, 1983.<sup>1</sup> The designation order specified the following issues for hearing:

1. To determine with respect to Solano Broadcasting Limited, Coastland Media Systems, Inc. and Golden Candlesticks Broadcasting, Inc., whether there is reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.<sup>2</sup>
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

3. By separate *Memorandum Opinion and Orders*, FCC 84M-4973, released November 28, 1984, and FCC 84M-4974, released November 28, 1984, the Presiding Judge designated the following additional issues:

To determine whether Michael Parker is a real party-in-interest in the San Bernardino Broadcasting Limited Partnership application and, if so, the effect thereof on the applicant's qualifications to be a Commission licensee.

To determine whether Crocker Communications Corporation has an ownership interest in Sandino Telecasters.<sup>3</sup>

To determine whether Sandino Telecasters or any of its principals (including Crocker Communications Corporation) has misrepresented facts or been lacking in candor with respect to matters arising from a merger agreement between Sandino Telecasters and Crocker Communications Corporation and, if so, the effect thereof on the basic or comparative qualifications of Sandino Telecasters.

4. Prehearing conferences were held on December 15, 1983, February 6, 1984, December 13, 1984, March 20, 1985 and July 16, 1985. An exhibit admission session was held April 24, 1985 and initial hearing sessions were held in Washington, D.C. on May 15, 16, 17, 18, 21, 22, 23, 24, 30 and 31, 1984 and June 1 and 5, 1984. Further hearing/rebuttal sessions were held on May 7, 8 and 9, 1985. The record in this proceeding was closed by *Order*, FCC 85M-4197, released October 29, 1985.

**PRELIMINARY MATTERS**

5. For good cause shown, the Petition for Leave to File Late Pleading filed by Buenavision on March 20, 1986, the Motion for Leave to File Supplement to Reply to Findings of Fact and Conclusions of Law, filed by Solano on June 3, 1986, the Motion for Leave to File Supplement filed by Inland on July 25, 1986, and the Motion for Leave to File Supplement filed by Inland on March 18, 1987 will be granted.

6. The Petition for Leave to Amend filed by Sandino on August 2, 1984 will be denied for the reasons set forth in paragraph 43 below.

**CHANNEL 30, INC.  
Proposed Findings of Fact**

7. Channel 30 is a corporation, incorporated under the laws of the State of California (Channel 30 Exh. 1). The corporation consists of two classes of stock, voting and nonvoting (Channel 30 Exh. 1), with four (4) shareholders holding voting stock and ten (10) shareholders holding nonvoting stock (Channel 30 Exh. 1). The stock is distributed as follows:

Voting Shareholders	Voting Stock	Ownership Interest <sup>4</sup>
Lucille Gilbreath	28.6%	10.924%
Betty Cox Johnson	28.6%	10.924%
Lucy Lopez	28.6%	10.924%
Suzanne Schott	14.3%	.840%
<b>Nonvoting Shareholders</b>		
John Gilbreath	0%	5.462%
Pat Gilbreath	0%	5.462%
Robert Hocker	0%	5.462%
Rosemarie Hocker	0%	5.462%
Albert Kishoba	0%	5.462%
Arthur Lopez	0%	5.462%
Mary Pettis	0%	10.924%
Arthur J. Pick, Jr.	0%	.840%
Clare Taber	0%	10.924%
Norton Younglove	0%	10.924%

The voting shareholders are also the only directors and officers of the corporation. Lucille Gilbreath is President, Suzanne Schott, Vice President, Lucy Lopez, Chief Financial Officer, and Betty Cox Johnson, Secretary (Channel 30 Exh. 1).

**Best Practicable Service**

8. Channel 30 proposes to integrate all four of its voting shareholders into the affairs of its proposed station. Ms. Gilbreath will serve as General Manager (Channel 30 Exh. 2; Tr. 2196), Suzanne Schott as Public Affairs Director (Channel 30 Exh. 5; Tr. 2241), Betty Cox Johnson as Program Director (Channel 30 Exh. 3; Tr. 2274), and Lucy Lopez as Business/Sales Director (Channel 30 Exh. 4; Tr. 2258).

**Lucille Gilbreath**

9. Ms. Gilbreath resides in Riverside, California, and her home is within the 80 dBu contour of Channel 30's proposed station (Channel 30, Exh. 2; Tr. 2199, 2218). Ms. Gilbreath has resided in Riverside since 1936, and she has lived at her present address since 1964 (Channel 30 Exh. 2). Ms. Gilbreath has indicated that she will continue to reside in Riverside in the event that her application is granted.

10. Ms. Gilbreath has been a member of the Riverside Chamber of Commerce since 1966 (Channel 30 Exh. 2; Tr. 2191), and has chaired, for a term of one year, two separate and distinct committees of that organization (Channel 30 Exh. 2; Tr. 2193). She was subsequently elected in 1977 to a two-year term as Vice President for Community Affairs for the Chamber (Tr. 2193). In addition, she served as Vice President/President Elect of the Chamber, and from 1980-1981 she served as the first woman president of the Chamber (Channel 30 Exh. 2). Ms. Gilbreath has also been a member of the Riverside League of Women Voters since 1966 and has served on its Regional Task Force for Southern California since 1982 (Channel 30 Exh. 2). She has been a member for two years of the Advisory Council to the South Coast Air Quality Management District (Channel 30, Exh. 2; Tr. 2193-2194). In addition, Ms. Gilbreath is an active member of the Native Daughters of the Golden West, serving as that organization's president from 1953 to 1954, and since 1981 she has been a member of the World Affairs Council of Inland Southern California (Channel 30 Exh. 2; Tr. 2195). She also belongs to the Citizens University Committee for the University of California, at Riverside (Channel 30 Exh. 2), and she joined the Community Council for the Riverside Mission which was established to preserve and renovate a property owned by the City of Riverside as a historical landmark (Channel 30 Exh. 2; Tr. 2202). In the past, Ms. Gilbreath has been an active member of the Lincoln School PTA (Channel 30 Exh. 2; Tr. 2194), and from 1970 to 1983, Ms. Gilbreath participated in the Altrusa Club, a professional women's club which provides charitable services to the community (Channel 30 Exh. 2; Tr. 2164, 2203).

11. Ms. Gilbreath has never been an employee of a broadcast station.

12. Ms. Gilbreath does not claim status within a commonly recognized minority group.

**Suzanne Schott**

13. Ms. Schott will be employed as Public Affairs Director for the proposed station devoting a minimum of 40 hours a week on a permanent basis to her duties at the station (Channel 30 Revised Exh. 5; Tr. 2241). Her responsibilities will include establishing a public affairs policy for the station and identifying appropriate program formats to address community interests in the San Bernardino, California area (Channel 30 Revised Exh. 5; Tr. 2241, 2242). In addition, Ms. Schott will hire and supervise the staff required to support the Public Affairs Department (Tr. 2241, 2250).

14. Ms. Schott lived in San Bernardino, California from 1971 to 1978 (Tr. 2234). From 1978 to 1980 she lived in Mentone, California. In 1980 she moved to Grand Terrace, California (Tr. 2234). Mentone and Grand Terrace are both located within the 80 dBu contour of the proposed station (Channel 30 Revised Exh. 5; Tr. 2247). Ms. Schott moved back to San Bernardino in 1983 (Channel 30 Revised Exh. 5), and she has indicated that she will continue to reside in San Bernardino on a year-round basis should the Channel 30 application be granted (Channel 30 Revised Exh. 5).

15. Ms. Schott spent on the average of two days a week during 1976 as a volunteer at the Westside Drop-In Center for Teenagers (Channel 30 Revised Exh. 5; Tr. 2239-40), and in 1975 she volunteered approximately one and a half hours each week for six months to the Boys Club in San



Bernardino (Tr. 2240). Between 1974 and 1976, as a member of the PTA for the Roosevelt School in West San Bernardino, Ms. Schott tutored English as well as reading and spelling, and she was also a monitor in the school playground (Channel 30 Revised Exh. 5).

16. Ms. Schott has never been employed by a broadcast station (Tr. 2247).

17. Suzanne Schott is Black (Channel 30 Revised Exh. 5).

#### Lucy Lopez

18. If the Channel 30 application is granted, Ms. Lopez will be employed as Business/Sales Director for the proposed station on a full time basis, devoting a minimum of 40 hours a week to her duties at the station. In this position, she will be responsible for overseeing all financial affairs of the station (Channel 30 Exh. 4). Specifically, she will supervise and review all budgeting, purchasing and selling for the station (Tr. 2258), and as Business/Sales Director she will have a staff to help carry out these functions (Tr. 2258).

19. Ms. Lopez resides in Riverside, California, within the proposed 80 dBu contour of the station (Channel 30 Exh. 4; Tr. 2257-58). She has been a resident of Riverside for the past 14 years and will continue to live within the 80 dBu contour of Channel 30's proposed station should its application be granted (Channel 30 Exh. 4).

20. From 1970 to the present, Ms. Lopez has worked with the Latin American Manufacturers Association (Channel 30 Exh. 4; Tr. 2255, 2257) which provides assistance to new business ventures by other Hispanics (Tr. 2255). She presently acts as secretary to the chairman and also attends board meetings (Channel 30 Exh. 4). Ms. Lopez was a Boy Scouts Den Mother in Orange, California from 1962 through 1966, and had a Brownie troop in Riverside, California from 1966 through 1968 (Channel 30 Exh. 4). During this period, she also belonged to the Women's Chamber of Commerce of Orange County (Channel 30 Exh. 4; Tr. 2256). She also participated in fund raising activities for the La Sierra High School Boosters Club in Riverside, and from 1969 through 1977, helped with fashion shows and breakfasts the club sponsored to raise funds for the La Sierra High School athletic department (Channel 30 Exh. 4; Tr. 2256-57). In addition, Ms. Lopez participated in her husband's campaign for election to the Board of Alvord School District in Riverside, California (Channel 30 Exh. 4).

21. Ms. Lopez' parents were born in Mexico (Tr. 2257). She is a citizen of the United States (Tr. 2257).

#### Betty Cox Johnson

22. Ms. Johnson will be employed as Program Director at the station on a full-time basis devoting a minimum of 40 hours a week to her duties at the station. In this position, she will have responsibility for selecting and supervising programming for the station (Channel 30 Exh. 3; Tr. 2275).

23. Ms. Johnson lives in Riverside, California which is located within the 80 dBu contour of the proposed station (Channel 30 Exh. 3; Tr. 2281). She has resided in Riverside since 1970 and will maintain her residence there on a year-round basis should the Channel 30 application be granted (Channel 30 Exh. 3).

24. Ms. Johnson is a lifetime member of the Cancer Federation (Channel 30 Exh. 3), and she serves as a fundraiser and as a volunteer entertainer for that group (Channel 30 Exh. 3). She is also a member of the fundraising committee of the Founder's Club for the Riverside Community Hospital (Channel 30 Exh. 3; Tr. 2271). In 1981, Ms. Johnson received the Woman of the Year award from the Cancer Federation (Channel 30 Exh. 3). In addition, Ms. Johnson has performed volunteer services for a number of groups and organizations in the past, providing services for Freedom's Foundation, Tel Med Tapes, the American Cancer Society, Riverside Community Hospital, Blind Association in Riverside, H1-12 Masonic Organization, Rotary and other service clubs, National Orange Show, and the Indoor Sports Club for the Physically Disabled in Riverside (Channel 30 Exh. 3; Tr. 2269-71).

25. Ms. Johnson's past broadcast experience is limited primarily to appearing as an entertainer or host on various radio and television programs. In 1942, she was secretary to the program manager for KGFV-AM, and prepared the daily log for the station (Channel 30 Exh. 3).

26. Ms. Johnson does not claim minority status.

#### Diversification of Ownership of Media

27. Channel 30 has no interests in any existing medium of mass communications (Channel 30 Exh. 1). None of the holders of voting stock has any interests in any medium of mass communications (Channel 30 Exhs. 1, 2, 3, 4, 5). In addition, none of the shareholders of nonvoting stock has any media interests, and no spouse of a voting or nonvoting shareholder has any interests in any medium of mass communications (Channel 30 Exh. 1).

#### Conclusions of Law

28. As noted above, Channel 30 is a corporation with voting and nonvoting shareholders. Although a number of the voting and nonvoting shareholders are related: Arthur Lopez and Lucy Lopez are husband and wife; Lucille M. Gilbreath and John R. Gilbreath are mother and son; and John R. Gilbreath and Patricia A. Gilbreath are husband and wife, there is no evidence of record that these nonvoting family members have played any part in the decision making with respect to the affairs of the applicant. Without such evidence, these familial relationships, in and of themselves, are of no decisional significance. *See, Louisiana Super Communications Ltd. Partnership*, 59 RR 2d 761 (Rev. Bd. 1985).

29. Ms. Schott, one of Channel 30's proposed integrated principals received her voting stock interest in Channel 30 from her husband in return for a payment of \$10.00 (Tr. 2227). Although the voting shareholders were notified orally (Tr. 2175), Channel 30's By-laws require that they be given written notice as well as the opportunity to purchase the stock before it is offered to any other individual (Tr. 2265). The transfer took place on June 14, 1983 (Tr. 2239), and it was subsequently ratified by the voting shareholders by a written document dated July 1, 1983 (Tr. 2176-77). There is no evidence of record that any shareholder of Channel 30 has challenged at any time the transfer of stock to Ms. Schott. The Presiding Judge concludes, therefore, that the manner in which Ms. Schott acquired her voting stock interest in Channel 30 from her husband is of no decisional significance.

30. Mr. Schott acquired his stock in Channel 30 for services rendered to the applicant (Tr. 2178). According to the evidence of record, he transferred his stock to his wife because of his poor health (Tr. 2175). Ms. Schott testified that in the past she has lent her name to low power television applications that were in fact filed by her husband (Tr. 2245). She also indicated that she may consult with her husband, who is a communications consultant, with respect to her duties at the station (Tr. 2237, 2248). When pressed for details with respect to her duties at the station, Ms. Schott became noticeably confused (Tr. 2241-43, 2249-51). Ms. Schott has no broadcast experience or, for that matter, any type of managerial experience. The conclusion, therefore, is inescapable that Ms. Schott is in effect a "stand in" for her husband, and that she alone will not assume either a policy making or managerial role at the station. Channel 30 will not receive an integration credit for its proposal to integrate Ms. Schott.

31. Although Ms. Gilbreath has retired from her profession as a real estate operator, there is no evidence of record to contradict her contention that she has the will and energy to return to full-time employment (Tr. 2223). Her position as General Manager at the proposed station involves duties which are recognized as having policy making as well as managerial and supervisory responsibilities. (See, *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965).) Accordingly, Channel 30 is entitled to a full-time integration credit for its proposal to integrate Ms. Gilbreath into the affairs of the proposed station.

32. Ms. Johnson will serve as the station's Program Director. Her designated position as well as her description of her proposed duties at the station indicate that she will have a policy making role at the station with managerial and supervisory responsibilities. There is no evidence of record which calls into question her ability to assume such a role at the station. Any doubts to the contrary are based on pure speculation. Channel 30, therefore, is entitled to a further full-time integration credit for Ms. Johnson.

33. Ms. Lopez testified that as Business/Sales Director she will supervise and review all budgets, purchases, and sales, and that she will supervise employees who will assist her in these functions (Tr. 2258). The Presiding Judge found her testimony to be credible and to have demonstrated that Ms. Lopez will have policy making responsibilities and a managerial role at the station. Channel 30 will also receive a full-time integration credit for Ms. Lopez.

34. The Presiding Judge concludes that Channel 30 is entitled to a full-time quantitative integration credit of 85.7 percent for its proposal to integrate Ms. Johnson, Ms. Gilbreath, and Ms. Lopez into the affairs of the station on a full-time basis. Channel 30's integration credit is qualitatively enhanced by the residence of Ms. Johnson, Ms. Gilbreath and Ms. Lopez in Riverside, California which is located within Channel 30's projected service area, and to a further degree by the involvement of Ms. Lopez and Ms. Gilbreath to a very limited extent in civic affairs in the San Bernardino area as well as Ms. Johnson's involvement in local civic affairs in the San Bernardino area to a moderate degree. Ms. Lopez and Ms. Gilbreath have no broadcast experience which relates to the operation of a broadcast station. Ms. Johnson has only very limited experience working at a broadcast facility which, furthermore, occurred more than 40 years ago. Her extensive

experience as an on-the-air entertainer does not qualify Channel 30 for any further enhancement of its quantitative integration credit. Channel 30, therefore, is not entitled to any qualitative enhancement credit for past broadcast experience.

35. Neither Channel 30 nor any of its shareholders have any chargeable interests in any medium of mass communications.

#### SANDINO TELECASTERS

##### Findings of Fact

36. When filed and at the time this matter was designated for hearing, Sandino was composed of a single individual, Jose M. Oti, doing business as Sandino Telecasters.<sup>5</sup> Mr. Oti prosecuted the application as an individual until after this matter was designated for hearing. A Joint Petition for Approval of Merger Agreement and Dismissal of Application was filed by Sandino and Crocker Communications Corporation (CCC)<sup>6</sup> whose application for the San Bernardino facility was also pending at the time. Attached thereto was a Merger Agreement which provided that a limited partnership would be formed in which Mr. Oti would be the sole general partner and CCC and Meshulam Riklis would each hold limited partnership interests. The Merger Agreement was executed by Messrs. Oti and Riklis and by Mr. Crocker for CCC (Solano Exh. 10, Att. 2). The joint petition was granted and the parties were directed to file a limited partnership agreement shortly thereafter (Tr. 1305). As a result, the applicant entity became Sandino Telecasters, A Limited Partnership. The Limited Partnership Agreement was drafted and executed by Messrs. Oti and Riklis (Sandino Exh. 7), but was never executed by CCC.

37. On August 2, 1984, a Petition for Leave to Amend was filed by Sandino which reflected the removal of CCC as a limited partner and the continuation, without other material change, of the Sandino limited partnership with Mr. Oti continuing as sole general partner and Mr. Riklis as sole limited partner. The Oti-Riklis limited partnership agreement was submitted as Attachment 1 to the aforementioned Petition for Leave to Amend. At a procedural conference held March 20, 1985, the Presiding Judge set aside the previous approval of the merger between Oti, CCC and Riklis (Tr. 3223-24), and Sandino's August 2, 1984 Petition is still pending.

#### Best Practicable Service

##### Jose M. Oti

38. Mr. Oti currently resides in Chicago, Illinois. Between January 1976 and May 1977 he lived in Manhattan Beach, California which is located within Sandino's Grade B contour (Sandino Exh. 3). If Sandino's application is granted, Mr. Oti will relocate to San Bernardino, and he will work a minimum of 40 hours a week at his duties as the station's General Manager. Mr. Oti indicates that he will be responsible for all the station's operations, and that he will establish the station policies, administer the station's EEO program, supervise all department heads, and do the hiring and firing of the station's personnel (Sandino Exh. 3).

39. Mr. Oti is employed as an Account Executive with Blair Television. His duties include the solicitation and placement of advertising on broadcast stations and the

participation with station management in sales development. From May 1980 to September 1981, Mr. Oti was an Account Executive at WBBM-TV, Chicago, Illinois where he was responsible for the development of retail advertising sales and advertising agency accounts (Sandino Exh. 3).

40. Mr. Oti was born in Cuba of Cuban parents. He is a naturalized United States citizen and is fluent in both English and Spanish (Sandino Exh. 3).

#### Diversification of Ownership of Media

41. Neither the limited partnership, Sandino, nor Mr. Oti has any interest in or formal connection with any broadcast station or any other medium of mass communications (Sandino Exh. 2).

#### Conclusions of Law

42. On May 14, 1984, Sandino and Crocker Communications Corporation (Crocker) filed within this Commission a "Joint Petition for Approval of Merger Agreement and Dismissal of Application." The Merger Agreement provided for the dismissal of Crocker's application and the creation of a limited partnership with Mr. Oti as sole general partner with an equity interest of 30 percent. Crocker would be a limited partner with a 20 percent equity interest and a third party, Meshulam Riklis, would be a limited partner with a 50 percent equity interest (Sandino Exh. 6). A petition for leave to amend was filed on the same date reflecting that information, and the parties to Sandino's application were listed as Jose Oti, Crocker and Meshulam Riklis (RBN Exh. 10). The merger was approved on May 21, 1984, and the prompt production of the partnership agreement was ordered (Tr. 1305-06). Sandino's case was heard on June 1, 1984. During the presentation of Sandino's case, it was reported by counsel for Sandino that Mr. Crocker had unresolved "questions and reservations" concerning the proposed Limited Partnership Agreement (Tr. 2895-96, 3301), and on August 2, 1984, a further petition for leave to amend was filed which reported that the Agreement had not been finalized because of the refusal of Crocker's principal, Frankie Crocker to execute the Limited Partnership Agreement (RBN Exh. 12). Based on this representation, the Presiding Judge set aside that portion of his prior order entered on the record on May 21, 1984 (Tr. 1305) which approved the settlement agreement (Tr. 3223-24).

43. Sandino's lack of candor in representing at the time it went forward with its direct case that it was a functioning partnership when it was not, and Mr. Oti's failure to properly report the true status of the settlement agreement warrants Sandino's disqualification. Applicant's lack of forthrightness with the Commission has not only prejudiced the other parties to this proceeding, it has unnecessarily complicated this proceeding. Mr. Oti's motive in concealing the true status of the settlement negotiations is clear; the fact that Crocker was not a partner at that late stage in the proceeding would have endangered the Sandino application, a point that Sandino appears to have conceded. (See, Supplemental Proposed Findings of Fact and Conclusions of Law of Sandino Telecasters, Phase I, at 12.) Mr. Oti deliberately waited to report this very significant fact to the other parties and to this Commission until after he had negotiated a new deal with Mr. Riklis. The Presiding Judge finds that Mr. Oti's actions in presenting

Sandino as a partnership when in fact it was not, and his failure to report the true status of the settlement negotiations warrants Sandino's disqualification and it will be so ordered. However, in the event that Sandino's disqualification is overturned on appeal, the following additional findings are made.

44. As of the date of the exchange of integration proposals, Sandino was an individual applicant with the stated intention to incorporate at some future time. Sandino's ownership structure at that time was, therefore, less than inchoate, with no objective basis upon which to award an integration credit. Mr. Oti's statement that he would be totally in control of the applicant, absent underlying documentation, would not be sufficient to support his claim for a 100 percent or, for that matter, for any quantitative integration credit. Any subsequent attempt to firm up Sandino's ownership after that time to reflect his total or partial control would constitute an impermissible upgrade. The Presiding Judge concludes, therefore, that Sandino is not entitled to any integration credit for its proposal to integrate Mr. Oti into the affairs of its station.

#### SAN BERNARDINO BROADCASTING LIMITED PARTNERSHIP Findings of Fact

45. SBBLP is a limited partnership (SBBLP Exh. 1). The general partner and 10 percent owner of SBBLP is San Bernardino Valley Broadcasting Co. (SBVBC), a corporation (SBBLP Exh. 1). Anita Van Osdel is the 100 percent shareholder, sole director and president of SBVBC. The ownership percentages of SBBLP's limited partners are as follows:

Larry and Sally Peterson	20 percent
Edwin and Joyan Illsley	22.7 percent
Wallace G. and Jean Miller	7.57 percent
Gary and Patricia Bobbitt	7.57 percent
Lawrence Novack	7.57 percent
William Hedin	7.57 percent
Herb and Marlene Schoenfeld	5.68 percent
Charles and Josephine	
Strebig (jointly)	3.78 percent
Josephine Strebig	3.78 percent
Susan Miller	3.78 percent

#### Best Practicable Service

##### Anita Van Osdel

46. Ms. Van Osdel has lived in Highland, California which is contiguous to San Bernardino and within the city grade contour of SBBLP's proposed station from 1978 to the present. Between 1969 and 1978 Ms. Osdel lived in Rialto, California which is also both contiguous to San Bernardino as well as within the city grade contour of SBBLP's proposed station (SBBLP Exh. 4), and from 1946 to 1969 she lived in San Bernardino, California (SBBLP Exh. 4). In the event that SBBLP's application is granted, Ms. Van Osdel has indicated that she will move to a residence within the city limits of San Bernardino (SBBLP Exh. 4).

47. Ms. Van Osdel will work a minimum of 40 hours a week as General Manager of the station (SBBLP Exh. 4). In that capacity, it is reported that she will have day-to-day oversight and management responsibilities for all aspects of the station's operations, including but not limited to programming, sales and financing (SBBLP Exh. 4).

48. From 1979 to 1983, Ms. Van Osdel devoted approximately 4-5 hours a week to the San Bernardino Chamber of Commerce, serving as captain of a membership team in 1980, and in September 1982 and January 1983, she was nominated Ambassador of the Month. She also served as chairperson for the Chamber's Koffee Klatch, which provides a forum for members to meet on an informal basis, and from 1978 to 1981 she served on the Chamber's Trade Club Committee, a committee which helps businessmen and women meet in a social atmosphere (SBBLP Exh. 4).

49. Ms. Van Osdel in the past has been employed as an Account Executive at radio stations KQLH-FM, San Bernardino and KWRM-AM, Corona, California (SBBLP Exh. 4). In addition, she was a regular, weekly guest panelist, during 1972-1973, on a Spanish language talk show broadcast by station KCAL, Redlands, California. During 1973-1974, Ms. Van Osdel was a regular, monthly guest panelist on a Spanish language program on television station KPLM, Palm Springs, California (SBBLP Exh. 4).

50. Ms. Van Osdel is Hispanic.

#### Diversification of Ownership of Media

51. Ms. Van Osdel has no mass media interests other than the application for Channel 30, San Bernardino, California.

52. S. Kim O'Neal, who was Secretary of SBVBC from May 5, 1983 to August 31, 1983, was also Secretary (from July 14, 1983 to August 31, 1983) of Mt. Baker Broadcasting Company, Inc. (Mt. Baker), holder of a construction permit to operate on television Channel 24, Anacortes, Washington.<sup>8</sup> Arlene Meryhew, who was Secretary of SBVBC from September 16, 1983 to May 3, 1984, was also Secretary of Mt. Baker from August 31, 1983 to May 3, 1984 (SBBLP Exh. 2).

53. On March 26, 1984, SBBLP limited partners Herb and Marlene Schoenfeld acquired 11.1 percent of the stock of Mt. Baker (SBBLP Exh. 2). The Schoenfelds' committed themselves to divest their interests in Mt. Baker in the event of a grant of SBBLP's application at the time they acquired the Mt. Baker stock (SBBLP Exh. 2). None of the other limited partners of SBBLP has any mass media interests other than the application for Channel 30, San Bernardino, California (SBBLP Exh. 2).

#### Conclusions of Law

54. Ms. Van Osdel became the sole principal of SBBLP's general partner on May 5, 1983, the day before the SBBLP application for the Channel 30 facility was filed. By the time she became a party to the application, Michael Parker had already organized SBBLP's business structure (Tr. 2085-86, 3519-20). The only thing that Ms. Van Osdel contributed to the application was some personal information and her signature (Tr. 2112-13). Ms. Van Osdel received her equity interest in the applicant from S. Kim O'Neal, an employee of Mr. Parker, and Ms. O'Neal became the corporate general partner's secretary

upon Mr. Parker's recommendation (Tr. 2091, 3351). Mr. Parker transferred his limited partnership equity interest of 10 percent in the applicant to his brother-in-law and sister, Larry and Sally Peterson (Tr. 3865-66). At the same time as she became a principal, Ms. Van Osdel entered into a consulting agreement with Mr. Parker's company, Mike Parker and Associates, whereby she agreed to pay Mr. Parker \$60,000 for past services to the applicant and an hourly fee for future services (Tr. 3351-52, 3361). According to her testimony, she signed the agreement based solely on Mr. Parker's representations, without consulting an attorney and without determining whether or not Mr. Parker's fee was reasonable (Tr. 3348-50, 3407). There was no discussion of her pursuing the application without hiring Mr. Parker as a consultant. Mr. Parker secured the original financing for the station from an individual who shared an office with Mr. Parker and who had been an investor in other Parker projects (Tr. 3633-34, 3788-90, 3798, 3957-58), and an equipment leasing proposal from a firm with which he had done business in the past. When the original financing proposal was abandoned, he arranged for a commitment letter from another lending institution by meeting with the bank's president and discussing with him the need for a commitment letter (Tr. 3440-41). He also indicated that his company no longer deals with SBBLP's original leasing company, which apparently accounts for the subsequent change in SBBLP's equipment leasing company. Mr. Parker also selected SBBLP's communications counsel as well as its consulting engineer (Tr. 3367, 3394-95, 3801-04).

55. The Certificate of Limited Partnership lists Mr. Parker's office as the principal place of business for the corporate general partner (Tr. 3414-15). Mr. Parker maintained the corporation's books and records (Tr. 3572). He also accompanied Ms. Van Osdel when she opened the corporate general partner's bank account, and at his suggestion the account requires the signature of any two of the following four persons: Mr. Parker, himself; his brother-in-law, Mr. Peterson; his employee, Ms. O'Neal; and, finally, Ms. Van Osdel (Tr. 3364). When Ms. O'Neal left Mr. Parker's employ, Arlene Meryhew another Parker employee, became her replacement. Ms. Van Osdel alone cannot sign corporate checks, although corporate checks can be executed without her participation. Mr. Parker also had possession of the checkbook, and when Ms. Van Osdel inadvertently kept it, she mailed it back to Mr. Parker (Tr. 3398-3400, 3637-38). In addition, Mr. Parker could have SBVBC and SBBLP's documents signed without Ms. Van Osdel's participation but she could not sign corporate documents without the signature of Mr. Parker's employee, since SBBLP's By-laws require that any contract, mortgage, deed, bond or other instrument be signed by the Secretary or Assistant Secretary to be valid (Inland Empire Exh. 26 at 6; Tr. 3554-55). Although it is within Ms. Van Osdel's authority as sole principal of the general partner to change the By-laws which define the duties of the Secretary, the fact is that she did not do so. Mr. Parker sent a copy of the application to the public inspection file, and his brother-in-law, Mr. Peterson had the responsibility for maintaining the public inspection file, as well as the responsibility for insuring publication of local notice of the filing of the application (Tr. 3567-69). Mr. Parker also received copies of letters from SBBLP's communications counsel between May 10, 1983 and October 25, 1983 as to the status of the San Bernardino proceeding

which were not supplied to Ms. Van Osdel (TV 30 Exhs. 11-15; Channel 30 Exhs. 12, 22, 23, 24, 26; Tr. 3638, 3831-55).

56. Ms. Van Osdel made an initial contribution of \$1,500 in cash for her equity interest in the applicant (Tr. 3522). Subsequently, she made an additional payment in the amount of \$1,500 in the form of a non-interest bearing promissory note (Inland Empire Exh. 24; Tr. 3522-24). The notes signed by the limited partners bear interest (Tr. 3535). Ms. Van Osdel's total contribution to the venture is \$3,000 dollars. She has no further financial obligation to SBBLP either for the prosecution of the application or for the construction of the station. In addition, she is reimbursed for any expenses that she incurs on behalf of the applicant, and she has received payments from the Partnership in the amount of \$4,000 in 1984 and \$1,000 in January 1985 (Tr. 2149, 3373-74, 3512, 3530). Ms. Van Osdel considered these payments as a salary (Tr. 3518-19). It is clear, therefore, that Ms. Van Osdel has no net financial stake in the venture, and has actually been paid money by the Partnership to serve as sole principal of the corporate general partner.

57. The evidence of record demonstrates that Ms. Van Osdel was a last minute recruit to the SBBLP application which Mr. Parker prepared, sponsored and controlled. He disposed of his equity interest because he believed that it impacted negatively on SBBLP's application (Tr. 3549). He transferred his ownership interest to relatives and remained in control of the application by means of the consulting agreement and his direct and indirect control over SBBLP's purse strings -- a fact clearly demonstrated by the fact that he was paid an amount in excess of that provided for in the consulting agreement without the written or prior approval of Ms. Van Osdel (Tr. 3541-42). As of the date of the hearing, Mr. Parker had been paid \$153,460.35, whereas invoices totalling only \$39,843.34 have been submitted by Parker and Associates (Tr. 3577-78).

58. It was not until after the designation of the real party-in-interest issue against SBBLP that Mr. Parker's influence and control over SBBLP abated. Ms. Van Osdel terminated Mr. Parker's consulting agreement in December 1984 after the release date of the *Memorandum Opinion and Order* designating the real party-in-interest issue (Tr. 3422-23). However, actions taken once an applicant knows that it is under Commission scrutiny are of little evidentiary value. See, *National Black Media Coalition v. F.C.C.*, 775 F.2d 342. Prior to that time, Ms. Van Osdel made no effort to exercise any control over the venture. She ceded virtually all responsibility for the conduct of SBBLP's affairs to Mr. Parker, a relative of Mr. Parker's, and an employee of Mr. Parker's. Although she terminated the consulting agreement with Mr. Parker, she did not rule out using his services in the future (Tr. 2155-52). In view of Ms. Van Osdel's total lack of any meaningful experience in the broadcasting industry and her lack of any managerial experience, it is highly likely that she will again call on Mr. Parker's services in the event that SBBLP is the successful applicant (Tr. 2085).

59. The fact that Ms. Van Osdel went forward with her proposal to broadcast Spanish language programming against Mr. Parker's advice does not establish Ms. Van Osdel's purported independence (Tr. 3854-55, 3886-87). The record indicates that he stated simply that he did not think that credit could be obtained in this particular case for a Spanish language format, mentioning at the same

time that a special credit for foreign language programming is sometimes available (Tr. 3887). It is noted in this regard that Ms. Van Osdel had nothing to do with developing the program percentages in the application (Tr. 3595). As to the rejection of Mr. Parker's advice on the citizenship question cited by SBBLP as another example of Ms. Van Osdel's purported independence from Mr. Parker, this alleged disagreement came up during the initial hearing at the same time that questions were also raised as to the extent of Mr. Parker's involvement in the applicant (Tr. 3898). As to Ms. Van Osdel's alleged solo effort in raising the necessary financing for the station, even the limited partners recruited by Ms. Van Osdel were given a sales pitch by Mr. Parker before they agreed to become part of the applicant (Tr. 3372, 3944).

60. The evidence of record requires a negative finding against SBBLP on the real party-in-interest issue, mandating SBBLP's disqualification. In the event, however, that such a penalty is found to be too harsh on review, the Presiding Judge reaches the additional conclusion that SBBLP is not entitled to any integration credit for its proposal to integrate Ms. Van Osdel. Her past behavior in relying virtually totally on others makes it very unlikely that she will exercise control over the affairs of the station to a degree that would entitle her proposal to an integration credit.

61. In view of the fact that Michael Parker has been found to be a real party-in-interest to this application, his media interests, including his consulting agreements are chargeable to SBBLP's application. As of the B cutoff date, Michael Parker was an 11 percent shareholder in the permittee of a television station in Tacoma, Washington; a 35 percent shareholder and a director of Pacific Rim Broadcasting Company, the permittee of a new television station in Honolulu, Hawaii; a 9.1 percent shareholder in Totem Broadcasting Company (Totem), the permittee of a television station in Anchorage, Alaska; and a 25 percent shareholder in Mt. Baker Broadcasting Company, Inc., the permittee of a new television station in Anacortes, Washington. By June 29, 1984, his interest in Totem had increased to 14.95 percent, and his interest in Mt. Baker to 36.4 percent (See, Petition for Leave to Amend filed by SBBLP on June 29, 1984, received by Order, FCC 84M-3329, released July 31, 1984.) In addition, SBBLP is awarded a further diversification demerit since Ms. O'Neal and Ms. Meryhew, while corporate secretaries of SBBLP's general partner, were also corporate secretaries of Mt. Baker Broadcasting Company, Inc., the licensee for Channel 24, Anacortes, Washington. (See, Petition for Leave to Amend filed by SBBLP on May 10, 1984, received by Order, FCC 84M-2559, released June 5, 1984.)

#### SOLANO BROADCASTING LIMITED Findings of Fact

62. Solano is a limited partnership formed under the laws of the State of Texas (Solano Exh 1). The partnership is composed of one general partner, Solano Broadcasting Company (SBC), and two limited partners, Channel 30 Investors I (C30-I) and Channel 30 Investors II (C30-II) (Solano Exh. 1). The general partner, SBC, holds a 20 percent ownership equity interest in Solano, C30-I holds a 68 percent limited partnership equity interest in Solano, and C30-II holds a 12 percent limited partnership equity interest in Solano (Solano Exh. 1).

63. Solano Broadcasting Company (SBC), the general partner of Solano Broadcasting Limited, is a corporation formed under the laws of the State of California (Solano Exh. 1). The corporation has issued 1,500 shares of stock and has four individual shareholders. SBC's officers, directors, and their voting stock interests are as follows:

Name	Official Position	Shares	Percent
Henry T. Mendoza, III	President, Director	475	31.67%
David Garcia	Vice President, Director	475	31.67%
Annabel R. Verches	Secretary, Treasurer, Director	475	31.67%
Patrick D. Pattison	Vice President, Director	75	5%

64. C30-I is a partnership composed of 15 individuals. The individual partners of C30-I and their percentage equity interests in C30-I are as follows (Solano Exh. 1):

Name	Equity % of C30-I Partnership
Kenneth M. Gindy	5.59%
Jesse H. Oppenheimer	8.82%
Seagal V. Wheatley	8.82%
Reese L. Harrison, Jr.	4.12%
Carl R. Teague	4.12%
Robert Lee Smith	1.76%
John H. Tate, II	4.12%
Herbert D. Kelleher	12.94%
Ronnie H. Ricks	1.76%
Raymond J. Schneider	8.24%
Stanley L. Blend	8.24%
James F. Parker	12.65%
Richard N. Weinstein	1.76%
Stanley D. Rosenberg	12.94%
J. David Oppenheimer	4.12%

65. C30-II is a partnership composed of six individuals. The individual partners of C30-II and their percentage equity interests in C30-II are as follows:

Name	Equity % of C30-II Partnership
Dennis Lane	10.00%
Paul Y. Seligson	26.67%
Arthur Scheiner	20.00%
Michael H. Rosenbloom	23.33%
Richard A. Solomon	10.00%
Irving P. Cohen	10.00%

#### Best Practicable Service

66. Solano proposes to integrate into the management of its television station on a full-time basis the shareholders holding 100 percent of the stock of Solano's general partner, Solano Broadcasting Company. These individuals are Henry T. Mendoza, III, Annabel Verches, David Garcia, and Patrick D. Pattison (Solano Exhs. 3, 4, 5, 6, 7).

#### Henry T. Mendoza, III

67. Mr. Mendoza will serve on a full-time basis as News Director of the station, devoting at least 40 hours a week to his position at the station (Solano Exhs. 3, 4). As News Director, Mr. Mendoza will be responsible for supervising the production of the station's news programs and news-related public affairs programming, and for directing the overall operation of the station's news gathering activities (Solano Exhs. 3, 4).

68. Mr. Mendoza was born in Los Angeles, California and has resided on a full-time basis at various residences within the city grade contour of Solano's proposed television station from birth to the present, with the exception of a single seven month period from October 1979 through April 1980, during which time he resided in Oakland, California (Solano Exh. 4). Mr. Mendoza has indicated that he intends to move to and reside in San Bernardino on a full-time basis in the event that Solano is the licensee.

69. Between April 1979 and October 1979, Mr. Mendoza served as full-time Assignment Editor of the Inland Empire (San Bernardino-Riverside area) Bureau of the News Department of KABC-TV, Los Angeles (Solano Exh. 4). In October 1981 he became a full-time employee of KABC-TV, Los Angeles, starting as a writer and producer and eventually becoming Weekend Assignment Editor within the KABC-TV News Department, where he remained through November 1984. At that time, Mr. Mendoza resigned from KABC-TV to begin employment on a full-time basis as a Producer in the News Department of KCBS-TV, Los Angeles. He is currently News Director of station KBAK-TV, Bakersfield, California (see, Petition for Leave to Amend filed by Solano on July 22, 1987, received by Order, FCC 87M-2217, released September 16, 1987). Mr. Mendoza will terminate his current employment, if Solano receives the construction permit, in order to work full time as the News Director of the Solano station, and he will not engage in any other business or employment activity while working at the Solano station (Solano Exh. 4).

70. Mr. Mendoza served as a member of the Board of Directors of the Riverside (California) Mental Health Association in 1978, and from 1976-1977 as a member of the Board of Directors of the Riverside Family Service Association (Solano Exh. 4). In addition, since 1974 Mr. Mendoza has been an active member of the California Chicano News Media Association which is based in Los Angeles, serving as president of this organization during 1982, and he has been a member of its Board of Directors from 1978 through to the present.

71. Mr. Mendoza is Hispanic.

#### David Garcia

72. Mr. Garcia will serve on a full-time basis as Program Director of the station, devoting at least 40 hours per week to this position (Solano Exhs. 3, 5). As Program Director, Mr. Garcia will be in charge of all aspects of

station's programming, including the production and scheduling of local programs, and the buying and scheduling of other programs, such as feature films, sports, and syndicated series and specials (Solano Exhs. 3, 4).

73. Except for the years from 1960 to 1968, Mr. Garcia has resided since 1944 on a full-time basis at various residences within the proposed city grade or Grade A contour as depicted in the engineering exhibits to Solano's application (Solano Exh. 5; Tr. 643). In the event that Solano receives the construction permit, Mr. Garcia intends to move to and reside in San Bernardino on a full-time basis (Solano Exh. 5).

74. In 1970, Mr. Garcia became a full-time producer of local documentaries at KABC-TV, Los Angeles. (Solano Exh. 5). He left KABC-TV in 1973 to serve as an assistant to producers of television programs at Universal Studios, and he later became involved in the development of television programming for NBC Television Network. In 1979, Mr. Garcia left the NBC Television Network to become an independent producer of television programs. Mr. Garcia will terminate his work as an independent producer if Solano receives the construction permit in order to work full time as Program Director at the Solano station. Mr. Garcia has indicated that he will not engage in any other business or employment activity while working at the Solano station (Solano Exh. 5).

75. Mr. Garcia is Hispanic.

#### **Annabel R. Verches**

76. Ms. Verches will serve on a full-time basis as Sales Manager of the proposed station, devoting at least 40 hours per week to this position (Solano Exhs. 3, 5). As Sales Manager, Ms. Verches will be in charge of the sales staff and the sale of station advertising time. In addition, Ms. Verches will be responsible for overseeing all local and national sales accounts (Solano Exhs. 3, 5).

77. Ms. Verches was born in Los Angeles in 1948. She has lived for most of her life at a number of residences all located within the station's proposed city grade coverage contour (Solano Exh. 6). Ms. Verches recently moved to San Francisco, California (*see*, Petition for Leave to Amend filed by Solano on July 22, 1987, received by Order, FCC 87M-2217, released September 16, 1987). She has, however, renewed her pledge to reside within Solano's proposed city grade contour in the event that the Solano application is granted (*see*, Petition for Leave to Amend filed by Solano on July 22, 1987).

78. Ms. Verches is presently employed with the Xerox Corporation (Solano Exh. 6). She will terminate her current employment if Solano is the successful applicant in order to work full time as Sales Manager at the station, and she will not engage in any other business or employment activity while working at the Solano station (Solano Exh. 6).

79. Ms. Verches has been involved with the Hispanic Association for Professional Advancement, based in the southern California area proposed to be served by Solano's station, serving as a member of the Board of Directors from 1976 to the present and as President from 1980 to 1981 (Solano Exh. 6). Ms. Verches explained that the purpose of the organization is to assist other Hispanics in developing their professional careers and in becoming positive influences in the community (Tr. 748).

80. Ms. Verches is Hispanic.

#### **Patrick D. Pattison**

81. Mr. Pattison will serve on a full-time basis as General Manager of the station, devoting at least 40 hours per week to his duties at the station (Solano Exhs. 3, 7). As General Manager, Mr. Pattison will oversee the activities of all station departments, determine major station policies, and supervise the day-to-day operations of the entire station (Solano Exhs. 3, 7).

82. Mr. Pattison was born in Corona del Mar, California in 1953. Except for a period between 1980 and May 1984, Mr. Pattison has lived on a full-time basis at various locations within Solano's city grade coverage contour (Solano Exh. 7; Tr. 791). Mr. Pattison presently resides in La Crecenta, California which is within the city grade contour proposed by Solano (Tr. 791). In the event that Solano is awarded the construction permit for Channel 30, Mr. Pattison will move to and reside in San Bernardino on a full-time basis (Solano Exh. 7; Tr. 837).

83. In January 1979, Mr. Pattison began working as full-time Advertising Manager for Metromedia, Inc.'s (Metromedia) station KTTV, Los Angeles (Solano Exh. 7). He was promoted within Metromedia in November 1981 to Vice President and Director of Advertising and Promotion for station WTTG-TV, Washington, D.C. (Solano Exh. 7), and in June 1982, Mr. Pattison became Director of Creative Services for Metromedia Producers Corporation, a wholly-owned subsidiary of Metromedia, Inc. (Solano Exh. 7). Subsequently, in April 1984, he was promoted to Vice President of Creative Services of Metromedia Producers Corporation (Tr. 833). In these positions, Mr. Pattison supervised the media buying and marketing for Metromedia's American stations and for Metromedia's domestic and international program syndication activities (Solano Exh. 7). Mr. Pattison resigned from Metromedia Producers Corporation in August 1985, and became Vice President of Creative Services for Walt Disney Domestic Television, Burbank, California. (*See*, Petition for Leave to Amend filed by Solano on October 15, 1985, received by Order, FCC 85M-4391, released November 7, 1985.) As of September 15, 1986, Mr. Pattison assumed the employment position of Creative Consultant to Buena Vista Television, Inc., an affiliate of Walt Disney Productions, Inc., and others. (*See*, Petition for Leave to Amend filed by Solano on September 19, 1986, received by Order, FCC 87M-124, released January 20, 1987, and Petition for Leave to Amend filed by Solano on August 11, 1987, received by Order, FCC 87M-2218, released September 16, 1987.) Mr. Pattison will terminate his current employment if Solano receives the construction permit at issue here in order to meet his integration commitment to Solano, and he will not engage in any other business or employment activity while working at the Solano station (Solano Exh. 7).

84. Mr. Pattison does not claim minority status.

#### **Diversification of Ownership of Media**

85. Solano Broadcasting Limited, its general partner, Solano Broadcasting Company, and the stockholders of the general partner, do not have any attributable ownership interest in any media of mass communications, with the exception of their interests in the Solano application itself (Solano Exh. 2).

86. Stanley D. Rosenberg, a partner in C30-I, is a director and holds 51 percent of the voting stock of KSDR, Inc., licensee of KLLS-AM, Terrell Hills, Texas. (*See*, Peti-



tion for Leave to Amend filed by Solano on May 9, 1985, received by *Order*, FCC 85M-3177, released August 15, 1985.) On July 24, 1986, an application was filed with the FCC seeking consent for the transfer of control of KSDR, Inc., licensee of KRNN-AM (formerly KLLS-AM), Terrell Hills, Texas, to Stanley Rosenberg. The application proposes the retirement of certain other stock to the treasury of KSDR, Inc., such that Mr. Rosenberg's percentage of ownership of outstanding shares will rise to 53.54 percent. Mr. Rosenberg has made a timely commitment that if the Solano application is granted, he will divest himself of all his interest in KSDR, Inc., and will sever all official relationships with that entity and KRNN-AM, prior to the receipt by Solano of program test authority. (See, Petition for Leave to Amend filed by Solano on January 23, 1985, received by *Order*, FCC 85M-571, released February 7, 1985.) No other partner of C30-I holds any interest in any media of mass communications (Solano Exh. 2).

87. Certain partners of C30-II hold limited partnership interests in TransCOM Limited Partnership I (TransCOM), the licensee of station KLZI-FM, Phoenix, Arizona. (See, Petition for Leave to Amend filed by Solano on August 13, 1984, received by *Order*, FCC 84M-3792, released August 31, 1984.) Specifically, the following persons hold the limited partnership ownership interests in TransCOM as set forth below (*Id.*):

Name	Percentage Limited Partnership Equity Interest in TransCOM
Michael H. Rosenbloom	1.063%
Arthur Scheiner	0.850%
Richard A. Solomon	0.425%
Irving P. Cohen	0.850%
Dennis Lane	0.850%

Each of these above-named partners of C30-II has made a timely commitment to divest himself of all his interest in TransCOM Limited Partnership I and KLZI-FM, prior to the receipt by Solano of program test authority. (See, Petition for Leave to Amend filed by Solano on August 13, 1984, received by *Order*, FCC 84M-3792, released August 31, 1984.) These partners of C30-II also hold interests in Washington Radio Investors, a general partnership that in turn holds a 1.65 percent limited partnership equity interest in TransColumbia Communications, Ltd. (TransColumbia). TransColumbia has submitted applications to the Federal Communications Commission seeking assignment to it of the licenses of three radio stations: WTMG-FM, Murfreesboro, Tennessee (assignment consummated on November 27, 1985); KMGR-FM, Orem, Utah (assignment consummated on November 27, 1985); and KKCI-FM, Liberty, Missouri. (See, Petition for Leave to Amend filed by Solano on November 5, 1985, received by *Order*, FCC 86M-762, released February 28, 1986; Petition for Leave to Amend filed by Solano on March 28, 1986, received by *Order*, FCC 86M-2745, released September 5, 1986.) The partners of C30-II that have interests in Washington Radio Investors and in turn in TransColumbia, are as follows:

Name	Percentage of Ownership of Washington Radio Investors	Derivative Ownership Percentage in TransColumbia
Arthur Scheiner	16.67%	0.28%
Michael H. Rosenbloom	11.11%	0.18%
Dennis Lane	16.67%	0.28%
Richard A. Solomon	11.11%	0.18%
Irving P. Cohen	16.67%	0.28%

TransColumbia Communications, Ltd. on January 13, 1986 filed an application for assignment to it of the license of KLAF-AM (now KOLC-AM), Murray Utah (BAL-860113EW), which was granted on February 21, 1986 and consummated on April 10, 1986. (See, Petition for Leave to Amend filed by Solano on March 28, 1986, received by *Order*, FCC 86M-2745, released September 5, 1986; Petition for Leave to Amend filed by Solano on May 27, 1986, received by *Order*, FCC 86M-2746, released September 5, 1986.)

88. Each of the above-named persons has made a timely commitment that if the Solano application is granted, he will divest himself of all of his interest in Washington Radio Investors, TransColumbia Communications, Ltd., WTMG-FM, KMGR-FM, and KKCI-FM, prior to the receipt by Solano of program test authority. (See, Petition for Leave to Amend filed by Solano on November 5, 1985, received by *Order*, FCC 86M-762, released February 28, 1986.) No other partner of C30-II has any interest in any media of mass communications (Solano Exh. 2).

89. On November 27, 1985 certain partners of C30-II were issued stock in Southwest MultiMedia Corporation (SWMM), the licensee of KPEJ-TV, Odessa, Texas, and on December 16, 1985, SWMM became the licensee of KVEO-TV, Brownsville, Texas. In addition, SWMM holds 100 percent of the stock of SWMM/Abilene Corp., which has received Commission approval for the assignment to it of the license of KTXS-TV, Sweetwater, Texas, as well as associated television translator stations K55AA, San Angelo, Texas, and K72DU, Brownwood, Texas (FCC File No. BALCT-850911KE). The assignment was consummated on March 12, 1986. (See, Petition for Leave to Amend filed by Solano on March 28, 1986, received by *Order*, FCC 86M-2745, released September 5, 1986.)

90. On October 10, 1986, an application was filed with the FCC seeking consent to the assignment of the licenses of station KTXS-TV, Sweetwater, Texas and television translator stations K72DU, Brownwood, Texas, and K55AA, San Angelo, Texas, from SWMM/Abilene, Inc. (a wholly-owned subsidiary of SWMM) to Lamco Communications, Inc. which was completed on December 22, 1986. (See, Petition for Leave to Amend filed by Solano on November 10, 1986, received by *Order*, FCC 87M-290, released February 10, 1987; Petition for Leave to Amend filed by Solano on February 5, 1987, received by *Order*, FCC 87M-505, released March 6, 1987.)

91. On October 21, 1986, an application was filed seeking Commission approval for the assignment of the construction permit of station KWKT-TV, Waco, Texas, from Focus Broadcasting of Waco, Inc. to SWMM/Waco Corporation. SWMM owns 80 percent of the stock of SWMM/Waco Corporation, and on January 28, 1987, the assignment was consummated. (See, Petition for Leave to Amend filed by Solano on November 10, 1986, received by *Order*, FCC 87M-290, released February 10, 1987; Peti-



tion for Leave to Amend filed by Solano on February 5, 1987, received by *Order*, FCC 87M-505, released March 6, 1987.)

92. The individuals involved and their respective stock ownership percentages in SWMM are as follows:

Arthur Scheiner	0.12%
Richard A. Solomon	0.05%
Paul Y. Seligson	0.06%
Irving P. Cohen	0.04%
Michael H. Rosenbloom	0.04%
Dennis Lane	0.03%

Messrs. Scheiner, Solomon, Seligson, Rosenbloom, Cohen, and Lane have each agreed to divest themselves of their interests in SWMM, and thus in KPEJ, KVEO, KTXS, K55AA, and K72DU if Solano is the successful applicant. (See, Petition for Leave to Amend filed by Solano on December 24, 1985, received by *Order*, FCC 86M-764, released February 28, 1986.)

#### Conclusions of Law

93. As noted above, Solano is a limited partnership composed of Solano Broadcasting Company (SBC), its general partner, with a 20 percent equity interest in Solano, and C30-I and C30-II, its limited partners, with a combined equity interest of 80 percent. The evidence of record indicates that principals of Solano's limited partners played significant roles in organizing Solano. It was Mr. Rosenbloom, a principal of C30-II, who suggested a limited partnership format for Solano (Tr. 840), and Mr. Parker, a principal of C30-I, who prepared the Limited Partnership Agreement (Tr. 574, 808). Mr. Rosenbloom prepared Solano's application (Tr. 854) with Mr. Parker's assistance (Tr. 520). Mr. Pattison, a shareholder in SBC and the station's proposed General Manager, when asked what role he had played in preparing Solano's application, indicated simply that he had signed it (Tr. 854).

94. Prior to signing Solano's application, Mr. Pattison did not see a financial plan detailing how the construction and operation of the proposed station would be financed (Tr. 855). According to his testimony, a certification letter was read to him dealing with the financial qualifications of the limited partners (Tr. 869); and that Solano's financial certification was made based on the limited partners' ability to come up with the necessary money (Tr. 576-79). Although Mr. Pattison discussed the certification letter with Mr. Rosenbloom "in a sense", he did not discuss it with any of his fellow shareholders of the general partner, SBC (Tr. 875). Mr. Mendoza, a shareholder of SBC, has not seen any financial documentation supporting the limited partners' ability to fund the station (Tr. 579), and the Board of Directors of Solano's general partner has not reviewed the financing plan for the station (Tr. 698). Furthermore, none of SBC's principals knew the location of Solano's financial records, even though the responsibility for the same is specifically allocated to Solano's general partner (Buenavision Exh. 6, see 2.06); Mr. Pattison believes that they are kept by a principal of the limited partners (Tr. 851).

95. Solano's limited partners also took an active role in selecting the principals of Solano's general partner as well as determining their specific roles at the station. Mr. Rosenbloom was instrumental in the selection of Mr. Gar-

cia as a shareholder, director and officer of SBC, and he informed Mr. Garcia as to the amount of his equity interest in the applicant (Tr. 680). When Mr. Garcia called Mr. Pattison for more details, the latter referred him to Mr. Rosenbloom (Tr. 829). Mr. Rosenbloom, of C30-II, along with Mr. Rosenberg, Mr. Seligson and Mr. Parker participated in discussions with SBC shareholders Mendoza and Pattison with regard to stock distribution (Tr. 815-22). Mr. Rosenbloom identified the job positions that each integrated principal would occupy (Tr. 533, 661-63), and he approved the selection of the individuals that would comprise the general partner (Tr. 552). Mr. Rosenbloom and Mr. Parker, a principal of C30-I, approved the decision to make Mr. Pattison general manager of the proposed station (Tr. 805), and Mr. Rosenbloom participated in the discussion which resulted in the naming of Mr. Mendoza as News Director and Ms. Verches as Sales Manager (Tr. 533-34, 820-22), and in the discussion as to who would serve as officers of the applicant (Tr. 812-13). Although Mr. Pattison drew up the preliminary budget for the station (Tr. 811), he indicated that he discussed the budget with Messrs. Parker and Rosenbloom who approved it (Tr. 811).

96. Solano's limited partners continued to be involved actively in the applicant's affairs even after the B cutoff date. Mr. Garcia testified that he spoke to Mr. Rosenbloom about the status of the application (Tr. 665) and about answers to interrogatories and his cross-examination (Tr. 666). Mr. Mendoza indicated that he had a discussion with Mr. Parker with respect to matters concerning the applicant (Tr. 548-49); and that Mr. Rosenbloom has been involved in preparing amendments to the application, answers to interrogatories, and Solano's integration proposal (Tr. 552-53). Ms. Verches also mentioned that she had spoken to Mr. Rosenbloom on numerous occasions (Tr. 730-31).

97. The Partnership Agreement makes it clear that the limited partners are ultimately responsible for coming forward with all of the funds required for prosecuting the application and for constructing and operating the station. (See, Buenavision Exh. 6, Section 4.03.) If the general partner is unable to meet on its own its *pro rata* share, that is 20 percent of the total cost of building and operating the facility, the general partner does not have the option to arrange for financing of its own choosing (Buenavision Exh. 6, Section 4.03). In such a case, the limited partners will finance the general partner's share of the total costs of the endeavor (Tr. 630-34). It is conceivable, therefore, that the limited partners may become the general partner's major creditor, giving added significance to the default provision in Solano's Limited Partnership agreement which, if brought into play, would permit the limited partners to choose a new general partner. (See, Buenavision Exh. 6, Section 6.02.) There is no evidence in the record that the general partner will be able to meet its 20 percent share of the cost of this endeavor. Its virtually total lack of any financial contribution to the enterprise to date would seem to indicate that it would not be able to do so.

98. The Presiding Judge concludes therefore that Solano's limited partners have played a significant role in Solano's organization and decision making; a role inconsistent with the passive role required of a limited partner in order to isolate that partner from comparative consideration. (See, *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984).) In addition, the Agreement itself which gives

the limited partners full responsibility for the cost of constructing and operating the station for the first three months places the limited partners in a position to become a substantial creditor of SBC with, potentially, considerable clout over the general partner, necessitating the conclusion that Solano's limited partners will be in a position to exercise a significant amount of control over the general partner. Accordingly, the equity interest of the two limited partners, which totals 80 percent of Solano's total equity, must be considered when evaluating the integration credit to which Solano is entitled. At the very most, therefore, Solano is entitled to only a 20 percent quantitative integration credit.

99. Solano proposes to integrate Messrs Pattison, Mendoza, Garcia, and Ms. Verches. None of the proposed integrated principals had signed subscription stock agreements as of the date of the filing of Solano's integration proposal.<sup>9</sup> The Review Board in *Houston Family Television, Ltd.*, 101 FCC 2d 661, 668 (1985), found a timely binding subscription agreement to be the "minimum price of admission for quantitative ownership integration credit." Therefore, Solano is not entitled to any integration credit for its proposal to integrate Messrs. Pattison, Mendoza, Garcia, and Ms. Verches into the affairs of its station.

100. Messrs. Mendoza and Pattison have no ownership interest in their respective places of employment; they are simply employees who do not occupy significant managerial positions. The Presiding Judge finds, therefore, that these associations do not constitute an attributable media interest. (See, *Minority Broadcasters of East St. Louis, Inc.*, 99 FCC 2d 264 (Rev. Bd. 1984).) Mr. Garcia's position with Sunny Productions is also of no decisional significance, since a production company is not a medium of mass communications absent a showing, which is not present here, that such an interest undermines the objectives underlying the Commission's diversification criterion. See, *Morris, Pierce & Pierce*, 88 FCC 2d 713 (Rev. Bd. 1981). Similarly, the fact that Mr. Garcia is an independent producer is of no significance since he has not had a program aired on television since 1981 (Tr. 644-45).

101. All of the principals of the limited partners who hold media interests have made timely commitments to divest themselves of these interests.

#### A & R BROADCASTING COMPANY, A LIMITED PARTNERSHIP

##### Findings of Fact

102. A&R is a limited partnership organized under the laws of the State of California (A&R Exh. 1). The general and limited partners of A&R and their respective voting and equity interests are as follows:

Name	Nature of Partnership Interest	Percentage of Voting	Percentage of Equity
Herbert B. Avery	General & Limited Partner	38.45%	27.5%
Calvin E. Burton	General & Limited Partner	30.76%	22.0%
Stanley G. Robertson	General & Limited Partner	15.38%	11.0%
Howard Morehead	General & Limited Partner	7.69%	5.5%
Jewell Shelton	General & Limited Partner	7.69%	5.5%
Charles E. Walker	Limited Partner	0%	27.5%
Total		99.97% <sup>10</sup>	99% <sup>10</sup>

#### Best Practicable Service

##### Herbert B. Avery

103. Dr. Avery is both a general and a limited partner in A&R, holding a 38.45 percent voting interest and a 27.5 percent equity interest (A&R Exh. 2). He is the Managing General Partner of A&R (Tr. 917). If A&R receives the construction permit for the new television station in San Bernardino, Dr. Avery will work full time, a minimum of 40 hours per week at the station as General Manager (A&R Exh. 2). In this capacity, he will be responsible for the general business functions of the station, and he will establish financial policies, assure compliance with all FCC rules and regulations, and oversee all station operations (A&R Exh. 2; Tr. 933-34).

104. Since 1972, Dr. Avery has lived in Los Angeles, California which is within the predicted Grade B contour and city grade contour of A&R's proposed station (A&R Exh. 2; Tr. 982). Dr. Avery has committed himself to move to and reside in the city of San Bernardino if A&R is successful in obtaining the construction permit for Channel 30 (A&R Exh. 2; Tr. 979).

105. Dr. Avery was Founder and Chairman of the American Sickle Cell Society in Los Angeles, California, and he chaired the organization from 1969 to 1974. He also served as Director of Watts Extended Health, Inc. whose purpose was the development and administration of state and federal grants for the provision of health services (A&R Exh. 2). In the first three or four years of Avery's participation, he spent 30 to 40 hours a week in setting up and running the program with no compensation or pay (Tr. 947). For a period of about a year or a year and a half thereafter, he was paid a partial salary (Tr. 947). In 1970, Dr. Avery organized a two-week national conference at the White House on children and youth. He also served as a member of the Los Angeles Regional Family Planning Council from 1968 to 1973, and he was a member of the Los Angeles Chapter of the Urban League from 1972 to 1978 (A&R Exh. 2).

106. Dr. Avery has no broadcast experience which is entitled to comparative consideration. His broadcast-related experience is limited to taking college courses in

film production, and appearing on a number of television shows and assisting in designing the concept and format of these shows (Tr. 941-42).

107. Dr. Avery is Black.

#### Calvin E. Burton

108. Mr. Burton is both a general and a limited partner in A&R, with a voting interest of 30.76 percent and an equity interest of 22.0 percent (A&R Exh. 3).

109. Mr. Burton, in the event that A&R receives the construction permit for Channel 30, will work full time, a minimum of 40 hours a week, at the new station as Station Manager and Sports Director (A&R Exh. 3). As Station Manager, he will be responsible for supervising the day-to-day station operations and conferring daily with the Program Director and regularly with the General Manager (A&R Exh. 3). In addition, he will oversee all personnel and coordinate the day-to-day operations and running of the station. As Sports Director, Mr. Burton will oversee all sports programming (A&R Exh. 3).

110. Mr. Burton is President, Chief Operating Officer and sole owner of Avandi II Productions (Avandi II) which primarily produces training films and "how to" programs for limited distribution. Mr. Burton intends to continue both his ownership of Avandi II and his involvement in that company in the event of a grant of the permit to A&R, devoting between 10 and 15 hours a week to Avandi II (A&R Exh. 31; Tr. 2385, 2474). Avandi II has a staff of eight employees, as well as 15 free-lance people and several other sales persons (Tr. 2383).

111. Since 1970, Mr. Burton has resided in Los Angeles, California, within the predicted Grade B service area of A&R's proposed station (A&R Exh. 3). Mr. Burton intends to relocate to San Bernardino and reside there permanently in the event that A&R is successful in obtaining the construction permit in this proceeding (A&R Exh. 3).

112. From June 1981 to the date of the hearing, Mr. Burton had been involved with the Los Angeles Olympic Organizing Committee Advisory Commission in Los Angeles, California. His involvement consisted of advising the committee on citizen participation. Mr. Burton is also a member of the Morgan State Alumni Association of California, located in Sherman Oaks, California, and he is also involved in coordinating fundraisers to support minority scholarship programs geared to assisting young adults (A&R Exh. 3). From April 1981 to the present, Mr. Burton has also been active in the Joint Conference for Increased Use of Minority Business located in Hawthorne, California. This group was organized to promote and assist minority contractors and minority firms (A&R Exh. 3). In addition, Mr. Burton has served as a member of the Board of Directors of the Southern California Counseling Center in Los Angeles, which oversees and provides staff assistance to people who cannot afford or cannot be accommodated by private mental health services or public agencies, or those persons who want individual, group, couple or family counseling as well as those families needing crisis intervention (A&R Exh. 3). Mr. Burton is also a founding and active member of the L.A. Basin Equal Opportunity League which is located in Los Angeles, California. This organization (1) upgrades the professional capabilities of persons responsible for implementing equal employment opportunity and affirmative action programs and (2) provides assistance in the placement of qualified female and minority job seekers (A&R Exh. 3). Since July

1983, Mr. Burton has been a member of the Hollywood Chamber of Commerce in Hollywood, California and since December 1983 a member of the Better Business Bureau of Los Angeles, California. In addition, he has been a member since June 1976 of a local, Los Angeles neighborhood association as well as an active member of the Hollywood Chapter of the National Association for the Advancement of Colored People, and the Public Affairs Committee of the Los Angeles Urban League. Since April 1970, he has been a member of the Media Forum, a state group located in Hollywood, California which sponsors weekly radio shows, benefit performances and seminars in other cities to keep before the public a balanced image in the media of minorities. Mr. Burton is also active locally and nationally in the United Negro College Fund (A&R Exh. 3).

113. Mr. Burton has received the following recognition and awards:

Appointed to Los Angeles Olympic Citizens Advisory Committee.

Member of the Board of Directors Institute for Advancement of Human Services, Inc.

Awarded Resolution by the City of Los Angeles for Outstanding Service to the Community.

Awarded Resolution by the City Council of Los Angeles for Outstanding Production on "What's Going On".

Los Angeles Urban League Outstanding Community Service Award.

114. Between March 1975 and March 1979, Mr. Burton worked on the KNBC-TV Saturday Show in Burbank, California. He performed a wide variety of functions at the station during this period of time, ranging from interviewing guests on camera to formulating business management policies. Prior to 1975, Mr. Burton worked for KNBC-NBC Stations Divisions in Burbank, California, and NBC in New York where he performed a number of functions from program manager for the development and production of local television programs to the administration of equal employment opportunity programs (A&R Exh. 3).

115. Special awards/recognitions received and achieved by Mr. Burton include:

Nominated for Emmy Award -- Producer, "What's Going On", half-hour public service series.

National Association of Television Program Executives Award for Excellence in the Production and Broadcast of "Maybe It's All In My Mind".

Best Local Television Public Affairs Host, Tenth Annual NAACP Image Awards Dinner.

First Black to produce and package network special ("Chicago Soul") on NBC.

116. Mr. Burton is Black.

#### Stanley G. Robertson

117. Mr. Robertson is both a general and a limited partner in A&R, with a voting interest of 15.38 percent and an equity interest of 11.0 percent (A&R Exh. 4). If

A&R receives the construction permit for a new television station in San Bernardino, he will work full time, a minimum of 40 hours per week, as the Program Director of the station. In this capacity, he will be responsible for developing, scheduling and supervising all production and programming (A&R Exh. 4).

118. Mr. Robertson has lived in Los Angeles, California within the predicted Grade B service contour of A&R's proposed station all of his life (Tr. 2340). He has indicated that he intends to relocate to the city of San Bernardino and reside there permanently in the event that A&R is successful in obtaining the construction permit in this proceeding (A&R Exh. 4).

119. Since 1982, Mr. Robertson has served on the Board of Directors of the Abram Freidman Occupational Center in Los Angeles, a local occupational center for employment training. Mr. Robertson advises and helps raise funds for the center (A&R Exh. 4). He has also served as a member of the Community Advisory Council for the Dorsey Adult Evening High School, a public high school in Los Angeles since 1983, and since 1982 he has been a member of the Board of Directors of Southern California Fair Housing Council which promotes fair housing opportunities, reviews housing cases, and publicizes the need for fair housing. Since 1977, Mr. Robertson has been Coach of Boys Division III of the American Youth Soccer Organization in the Los Angeles area (A&R Exh. 4). In addition, Mr. Robertson has been a member of the Hollywood branch of the National Association for the Advancement of Colored People and a member of the National Urban League since 1979 (A&R Exh. 4), and founder and an active member of the Association of Black Motion Picture and Television Producers since 1981. The Association is a local organization which promotes Blacks in the motion picture and television industries (A&R Exh. 4). For the past 25 years, Mr. Robertson has been a volunteer public speaker, motivator and counselor for minority youth interested in following a career in broadcasting and film. Mr. Robertson's activities have taken place in Los Angeles, in the Los Angeles Metropolitan Area, and in San Bernardino (Tr. 2339).

120. While attending the University of Southern California, Mr. Robertson served as General Manager of KUSC-TV, the University's television station (A&R Exh. 4). Otherwise, his professional career in the media has been limited to work in television and film production.

121. Mr. Robertson is Black.

#### Howard Morehead

122. Mr. Morehead is both a general and a limited partner in A&R, with a voting interest of 7.69 percent and an equity interest of 5.5 percent (A&R Exh. 5). If A&R receives the construction permit for the San Bernardino broadcast facility, Mr. Morehead is pledged to work full time at the station, devoting a minimum of 40 hours a week to his duties as News Director. In this capacity, he will supervise the assignment and coverage of all daily news and he will report on a day-to-day basis to the Station Manager (A&R Exh. 5).

123. Mr. Morehead has lived in Los Angeles, California since 1946, which is located within the Grade B contour of the proposed station. He is committed to move to and reside permanently in San Bernardino if A&R is the successful applicant (A&R Exh. 5).

124. Mr. Morehead is a member of the Press Photographers Club of Greater Los Angeles, California. Mr. Morehead has received numerous awards and citations related to his work as a photographer (A&R Exh. 5).

125. Mr. Morehead is Black.

#### Jewell V. Shelton

126. Ms. Shelton is both a general and a limited partner in A&R, with a voting interest of 7.69 percent and an equity interest of 5.5 percent (A&R Exh. 6). In the event that A&R receives the construction permit for a new television station in San Bernardino, California, she intends to work full time, a minimum of 40 hours per week, at the station as the Community Affairs Director (A&R Exh. 6). As Community Affairs Director, she will be responsible for acting as liaison between the television station and the community. In addition, it is represented that she will develop outreach programs, handle citizen complaints, confer with the Program Director, and develop community affairs programming, as well as being responsible for EEO compliance (A&R Exh. 6).

127. Ms. Shelton has resided for 20 years in the city of San Bernardino (A&R Exh. 6), and she will continue to live there in the event that A&R receives the permit for Channel 30 (A&R Exh. 6).

128. Ms. Shelton was President of the San Bernardino County School Board Association from 1981 to 1983. From 1975 to the present, she has been an Elder of the United Presbyterian Church in San Bernardino, California. Ms. Shelton was elected a member of the Board of Education for the San Bernardino City Unified School District and served in that capacity from 1975 to November 1983. In addition, she was a member of the Urban League of San Bernardino, California from 1975 to 1983 and is a life member of the National Council of Negro Women, San Bernardino Chapter. Ms. Shelton has also been and remains a member of various other groups of professional women. In addition, she has received numerous awards and citations in recognition of her civic involvement (A&R Exh. 6).

129. Ms. Shelton has no prior broadcast experience.

130. Ms. Shelton is Black.

#### Diversification of Ownership of Media

131. A&R does not have an interest in any medium of mass communications (A&R Exh. 3). Messrs. Avery, Burton, Robertson, and Morehead and Ms. Shelton also have no interest in any medium of mass communications (A&R Exh. 2; A&R Exh. 3; A&R Exh. 4; A&R Exh. 5; A&R Exh. 6).

132. Charles E. Walker, a limited partner in A&R with an equity interest of 27.50 percent in the applicant, is a controlling general partner in Urban Broadcasting Systems (Urban) which currently has an application pending for a construction permit for a new television station on Channel 61 at Houston, Texas (Docket No. 82-693, File No. BPCT-820510KR). A&R's application as filed contains the representation that Mr. Walker will withdraw as a partner in the A&R proceeding in the event that Urban's application for Houston, Texas is granted.

### Conclusions of Law

133. All of A&R's integrated principals are limited partners as well as general partners. The Review Board in *Cotton Broadcasting Company*, 104 FCC 2d 473 (Rev. Bd. 1986), indicated that "...such a Janus-like arrangement ... cannot be countenanced for ownership integration credit." The Presiding Judge concludes, therefore, in light of this holding, that A&R is not entitled to any integration credit.

134. Although Charles Walker claims to be the applicant's sole partner who is only a limited partner, the evidence of record indicates that he has not insulated himself from active involvement in the application. It demonstrates rather to the contrary that Mr. Walker is the prime force behind the A&R application. Mr. Walker sought out Mr. Burton in late April or early May of 1983 and offered him an interest in the partnership (Tr. 2376). He also contacted Mr. Robertson, another A&R principal, and informed him that he was putting together a group to apply for the Channel 30 facility (Tr. 2318-19). Mr. Walker subsequently outlined his proposal to Mr. Robertson and to another A&R principal, Mr. Avery (Tr. 2320), and he introduced communications counsel to the A&R principals, and the Limited Partnership Agreement was signed in his office (Tr. 923). At the time the application was filed, Mr. Walker was managing general partner with a 34 percent voting interest and a 30 percent equity interest (Tr. 918, 949). On the B cutoff date, he switched roles from general partner to limited partner because of his interest in an applicant for a broadcast facility in Houston, Texas and his integration commitment to that applicant (Tr. 906). He also testified that he took this action because of a concern that his interest in the Houston, Texas applicant would impact negatively on A&R's comparative standing in this proceeding (Tr. 911). Mr. Walker made a timely commitment to divest himself of his interest in A&R in the event that the Houston, Texas applicant is the licensee (Tr. 908). A&R's Partnership Agreement provides, however, that Mr. Walker will receive a \$100,000 payment from A&R in the event that he divests himself of his interest in A&R (Tr. 938-39). He therefore retains a significant interest in the outcome of this proceeding.

135. Mr. Walker continued to be actively involved in prosecuting A&R's application even after he resigned as general partner. Mr. Walker took an active role in discussions among A&R principals with respect to matters concerning the applicant (Tr. 2381). He continued to attend A&R meetings (Tr. 2333), and he continued to vote on matters on the agenda of the partnership (Tr. 2334-35). Mr. Walker also approached Ms. Shelton about joining the partnership, after he had already converted his interest from that of a general partner to a limited partner (Tr. 1029). As a limited partner, he also retained significant voting rights. For example, all of A&R's general partners are in agreement that paragraph (F) on page 3 of the Limited Partnership Agreement (Channel 30 Exh. 7) which provides that 51 percent of the limited partnership can vote to remove a general partner without cause or dissolve the partnership, permits Mr. Walker to participate in such actions (Tr. 929-30, 1016, 2340-41, 2349-50, 2382). In addition, a majority vote of all parties, including the limited partners, is required to determine the amount of funds to be contributed to the partnership (Channel 30 Exh. 7 at 8 (B); Tr. 958). Mr. Morehead testified that it was the substantial voting power accorded to the limited partners that convinced him to become a limited partner in addition to being a general partner. He referred specifi-

cally to the limited partner's authority to vote on the removal of a general partner and on the dissolution of the partnership (Tr. 2349-50). Mr. Walker's post B cutoff date activities as well as the broad authority granted to the limited partners by A&R's Limited Partnership Agreement are clearly inconsistent with the concept of the limited partner being insulated from active participation in the affairs of the partnership. For comparative purposes, therefore, Mr. Walker is considered to be a general partner as well.

136. Avandi II is a production company which produces non-commercial programming (Tr. 2388). In the absence of a showing that Mr. Burton's ownership of Avandi will undermine the objectives of the Commission's diversification policy, this interest is found to be of no decisional significance. (See, *Morris, Pierce & Pierce, supra.*)

### BUENAVISION BROADCASTERS

#### Findings of Fact

137. Buenavision is a California general partnership formed by oral agreement on May 6, 1983 which was amended on June 24, 1983 (Buenavision Exh. 1; Tr. 1117-18, 1125). The applicant consists of three general partners: H. Frank Dominguez, with a 51 percent partnership interest; Sylvia Herrera, with a 5 percent partnership interest; and Stella Ornelas, with a 44 percent partnership interest. Each one of the three general partners will be part of the proposed station's Executive Committee, and each partner will have an equal voice in the management of the station (Buenavision Exh. 1). The Executive Committee, which will meet weekly, will have overall responsibility for the operation of the station (Buenavision Exh. 1; Tr. 1052, 1073, 1163-65, 1217).

#### Best Practicable Service

##### H. Frank Dominguez

138. Mr. Dominguez intends to work full time, a minimum of 40 hours a week, as Chief Executive Officer and Chief Financial Officer of the station (Buenavision Revised Exh. 3). In addition to serving on the station's Executive Committee, Mr. Dominguez will implement station policies and ensure that these policies are followed by the station's employees. He will also oversee and direct the day-to-day operations of the station. In addition, Mr. Dominguez will administer and implement the station's equal employment opportunity program (Buenavision Revised Exh. 3).

139. Mr. Dominguez was born in San Bernardino, California and lived there for 26 years. With the exception of three years spent as an active member of the armed forces of the United States, he has spent the rest of his life in communities adjacent to San Bernardino (Buenavision Exh. 3).

140. Mr. Dominguez served as a board member of the Mexican-American Legal Defense Education Fund for four years between 1978 and 1982. He is currently a member of the Board of Directors and Finance Chairman for the National Association of Latino Elected and Appointed Officials. He has also been a member of the Colton Chamber of Commerce since 1974 and served that year on that organization's Board of Directors. In addition, he has been a member of the San Bernardino Mexican Chamber of Commerce since 1974, serving as a member

of its Board of Directors between 1974 and 1978; a member of the San Bernardino Chamber of Commerce since 1964, serving on its Board of Directors and as chairman of its Economic Development Committee between 1980 and 1982; and since 1980, he has been a member of the United States Hispanic Chamber of Commerce (BuenaVision Revised Exh. 3). Mr. Dominguez has also been appointed to the following civic boards: the San Bernardino County Employees Retirement Board in 1982; the City of San Bernardino Parking Place Commission from 1979 to 1983; and the State of California Advisory Council on Economic Development from 1978 to 1982 (BuenaVision Revised Exh. 3). In addition, Mr. Dominguez has been Honorary Deputy Sheriff for San Bernardino County since 1974. Between 1978 and 1983, Mr. Dominguez served as President of the San Bernardino Local Development Company, which furthers the economic development of San Bernardino (city and county) by promoting and assisting in the growth and development of small business in the community. Mr. Dominguez has also been a member of the California Housing Finance Agency.

141. Mr. Dominguez has been a member of the following charitable organizations: Father Michael Keane Memorial Fund in San Bernardino from 1980 to the present; the University of California Riverside Alumni Associates Scholarship Program from 1981 to the present; the Colton High School Scholarship Program from 1972 to the present; the Goodwill Industries of Inland Counties, Inc. in San Bernardino (member of its Board of Directors) from 1976 to the present; The Knights of Columbus since 1974; the Boy Scouts of America Century Club from 1964 to the present and, formerly, the Girl Scouts of America (Board member); and finally, the Immaculate Conception Church in San Bernardino (lector) (BuenaVision Revised Exh. 3).

142. Since 1968 Mr. Dominguez has served on the following committees for the election of various local, county, and state officials: Dr. Charles Terrell, Jr., for Superintendent of Schools in San Bernardino (1983); Robert Castaneda and Ralph Hernandez, for City Council of San Bernardino (1978 and 1982); George Brown for Congress (elections from 1974 to the present); Robert L. Hammock, for Supervisor of San Bernardino County (1970 to the present); Barbara Riordin, for Supervisor of San Bernardino County (1983 and 1984); Robert Townsend, for Supervisor of San Bernardino County (1974 to the present); Robert Older, for Supervisor of San Bernardino County (1980); Floyd Tidwell, for Sheriff of San Bernardino County (1983 and 1984); Abe Beltran and Frank Gonzales, for Mayor in Colton (since 1970); Ed Roybal for Congress (since 1970); Senator Ruben Ayala (since 1968); Senator Art Torres (since 1974); Assemblyman Richard Alatorre (since 1974); Mario Obledo, for State Governor (1980); David McKenna, for Supervisor (1980); and Governor Deukmejian's campaign (1981) (BuenaVision Revised Exh. 3; Tr. 1061-62).

143. Mr. Dominguez has experience in operating and managing cable television facilities in connection with his position as Chairman of the Board of BuenaVision Telecommunications, Inc., as well as in producing television programming (BuenaVision Revised Exh. 3; Tr. 1059-60, 1092).

144. Mr. Dominguez is Hispanic.

#### Stella Ornelas

145. Ms. Ornelas proposes to work full time, at least 40 hours a week, as Public Affairs Director of the proposed station (BuenaVision Revised Exh. 4). In addition to her service on the station's Executive Committee, Ms. Ornelas will act as liaison between the station and the San Bernardino community. As part of her duties, she will be responsible for ascertaining local needs, interests and issues, by drawing on her involvement in civic and community affairs and through research and meetings with community leaders and citizens. She will make programming recommendations which she considers responsive to the community needs and interests (BuenaVision Revised Exh. 4; Tr. 1157, 1168, 1178).

146. Ms. Ornelas is a lifelong resident of the San Bernardino area. She was born in San Bernardino and lived there for 23 years. Since 1966, Ms. Ornelas has lived in Colton and Rialto, California (BuenaVision Revised Exh. 4).

147. In 1957, Ms. Ornelas began a three-year term on the Board of Directors of Catholic Social Services, and she also served as the Youth Activities Coordinator for that group between 1957 and 1970. In addition, Ms. Ornelas served a three-year term on the Board of Directors of Casa Ramona Community Center beginning in 1958. Ms. Ornelas also served as President of the Knights and Marians Youth Organization of Our Lady of Guadalupe Catholic Church between 1962 and 1970, and since 1979, she has served on the Board of Directors of St. Vincent de Paul Charities. In addition, Ms. Ornelas has served on the Board of Directors of the Mexican American Commission since 1980 (BuenaVision Revised Exh. 4).

148. Ms. Ornelas has also been involved with the following additional civic and political organizations: the San Bernardino Business Women's Association since 1973; the California Republican Hispanic Council since 1982, of which she is currently State-wide Membership and Special Events Chairperson and local Vice President; and the California Hispanic Affairs Council since 1982. Ms. Ornelas was Area Coordinator of the Council for San Bernardino and Riverside Counties for 1982 as well as President of the local chapter of Women in Politics (BuenaVision Revised Exh. 4).

149. In 1979 Ms. Ornelas became Finance Director of the State Governor's Chicano Issues Conference, and she still serves in that capacity. In addition, between 1977 and 1978, Ms. Ornelas served as a member of the San Bernardino Valley College Affirmative Action Advisory Committee, and between 1978 and 1982, she was a member of the State Chicano Task Force, State Personnel Board which recruits minorities from local organizations, colleges and universities for positions within the state government. Since 1982, she has been an advisory member of that task force (BuenaVision Revised Exh. 4). From 1980 to the present, Ms. Ornelas has served as a coordinator for the junior high schools, junior colleges and San Bernardino State College for the MECHA, a Chicano student organization. In that role, she participates in the organization's training and career development activities. In addition, Ms. Ornelas is a member of the San Bernardino Mexican Chamber of Commerce, the Riverside Hispanic Chamber of Commerce, and the Chicano Advocates for Equality. She served as State-wide Secretary for the Chicano Advocates from 1978 to 1980 and as State-wide Southern Vice President from 1980 to 1982. She was president of the local San Bernardino chapter of that

organization from 1978 to 1982 and she is currently the president and has been since 1983. Ms. Ornelas is also a member of the Mexican American Political Association, and the San Bernardino Lupus Association (Buenavision Revised Exh. 4). She is a former member of the International Mexican-American Governmental Employees, and she served as State-wide (Southern) Vice President between 1964 and 1966. In 1966 she was elected to a two-year term as president of the San Bernardino local chapter of that organization (Buenavision Revised Exh. 4).

150. Ms. Ornelas has also worked on the following political campaigns: Cruz Reynosa for Supreme Court Justice; Mario Obledo for State Governor; George Nicholas for State Attorney General; Carol Hallet for State Lt. Governor; Pete Wilson for United States Senator; Democrats for Deukmejian; George Brown for Congress; Robert Hammock, Barbara Riordan and David McKenna for Board of Supervisors in San Bernardino County; John Paul Stark for Congress in 1982; Dr. Charles Terrell for Superintendent of Schools in 1982; Joe Baca for San Bernardino Community College Trustee Board; Robert Castanada and Uvaldo Martinez when they ran for Councilman in San Bernardino and San Diego, respectively; and Ruben Ayala. She also served as reception chairperson for a number of other candidates for elective office.

151. Ms. Ornelas has no broadcast experience which is entitled to comparative consideration.

152. Ms. Ornelas is Hispanic.

#### Sylvia Herrera

153. Ms. Herrera intends to devote a minimum of 40 hours a week to her position as Community Affairs Director of the station as well as to her duties as a member of the Executive Committee (Buenavision Ex. 5). Ms. Herrera will supervise all of the promotional activities and public relations efforts of the station. She will also be in charge of coordinating those activities recommended by Ms. Ornelas and approved by the Executive Committee, and of ensuring that the station responds to the needs, problems and interests of the San Bernardino community (Buenavision Exh. 5; Tr. 1217, 1240-42).

154. Ms. Herrera lived in Redlands, California, within the Grade B service area for a year and a half between July 1981 and December 1982 (Tr. 1231). She has indicated that she will return to Redlands in the event that Buenavision's application is granted (Buenavision Exh. 5; Tr. 1218).

155. Ms. Herrera has not been involved in civic activities in the San Bernardino area, and she has no past broadcast experience.

156. Ms. Herrera is Hispanic.

#### Diversification of Ownership of Media

157. Neither Buenavision, Stella Ornelas nor Sylvia Herrera hold any ownership interest in any medium of mass communications aside from the pending application in this proceeding (Buenavision Revised Exh. 2).

158. As of the B cutoff date in this proceeding, Mr. Dominguez owned 24 percent of the stock and served as Chairman of the Board of Buenavision Telecommunications, Inc. which operates a cable television system at East Los Angeles, California (Buenavision Revised Exh. 2). He also owned 51 percent of Buenavision Telecommunications of Boyle Heights, Inc. which operates a cable televi-

sion system adjacent to the East Los Angeles franchise. The two franchises, although separate corporate entities (Tr. 1054), were operated as a single cable system (Buenavision Exh. 2). Mr. Dominguez, as of the same date, also owned 40 percent of Buenavision Cable Television of Colton, Inc. which operates a cable system in Colton, California (Buenavision Revised Exh. 2). As January 1, 1984, Mr. Dominguez had increased his percentage of ownership in the Colton system to 51 percent (Tr. 1054). Mr. Dominguez also owns an 18 percent interest in the permittee of a construction permit for a new FM broadcast station on 106.9 MHz at Yucca Valley, California (Buenavision Revised Exh. 2). Mr. Dominguez has also applied for a cable system in Chino, California (Tr. 1070). Mr. Dominguez promised to divest himself of any interest in those entities or, in the alternative, to place his stock interests in a blind, irrevocable trust conferring on the trustee the unrestricted power to dispose of the stock in the event that Buenavision's application is granted (Buenavision Revised Exh. 2; Tr. 1055-56, 1061-1084-85, 1089, 1123-28). No special reference, however, was made to the Boyle Heights cable system as of the cutoff date.

159. Mr. Dominguez is a partner in Community Service Television Company (Community). Community was selected as the tentative selectee for a low power television station on Channel 31, San Diego, California. The permit has not yet been granted, pending coordination with the Mexican Government. (See, Petition for Leave to Amend filed by Buenavision on November 13, 1985, received by Order, FCC 86M-2719, released September 4, 1986.) Community was also granted a construction permit for Channel 60 in St. Louis, Missouri. (See, Petition for Leave to Amend filed by Buenavision on January 18, 1985, received by Order, FCC 85M-605, released February 8, 1985.)

160. Mr. Dominguez also owns 51 percent of VistaCom which applied for various low power television stations on March 8, 1984. Mr. Dominguez has promised to divest any interest in any station VistaCom may acquire if Buenavision is granted a construction permit. (See, Petition for Leave to Amend filed by Buenavision on January 18, 1985, received by Order, FCC 85M-605, released February 8, 1985.)

#### Conclusions of Law

161. The Review Board's decision in *Payne Communications, Inc.*, 61 RR 2d 1323 (Rev. Bd. 1986) appears to be controlling here in determining whether or not Buenavision is entitled to an integration credit. The Review Board in effect found as a matter of law that "it cannot award integration credit based upon oral ownership arrangements...." (*Payne, supra*, p. 1332). Therefore, the Presiding Judge concludes that Buenavision which is an oral partnership is not entitled to any integration credit. However, in the event that the *Payne* decision is found not to be controlling here, the Presiding Judge reaches the following additional conclusions.

162. The evidence of record clearly demonstrates that Mr. Dominguez has been in complete control of the venture since its inception. He has provided virtually all of the funds required for the prosecution of the application, even though the other general partners are responsible for providing their proportional share (Tr. 1138). Furthermore, he has excluded his fellow general partners from any decision making role with respect to the nature of the



applicant or Buenavision's proposal for the Channel 30 facility. For example, there were no discussions prior to the filing of the Buenavision application between Mr. Dominguez and Ms. Herrera as to the terms of the partnership (Tr. 1225-26, 1235). In addition, nothing was said as to her particular role at the station (Tr. 1215-16, 1218-19), what her salary would be (Tr. 1235), or about the nature of the partnership's management structure (Tr. 1228). Similarly, no one explained to Ms. Ornelas the substance of any of the terms of the preexisting oral partnership agreement when she was brought into the partnership just shortly before the B cutoff date (Tr. 1167). She testified that she first learned of her 44 percent interest in the applicant one week after the B cut off date amendment was filed (Tr. 1167, 1189-90). Ms. Ornelas did not discuss the matter with Mr. Dominguez (Tr. 1118), and no one asked her if she agreed to take a 44 percent interest and, presumably, no one asked her whether or not she could afford such an interest (Tr. 1167-68). As of the date of the hearing, the only terms of the Partnership Agreement apparently decided among the partners were each partner's share in the station's profits, the equal voting provisions, and each partner's responsibility for a portion of the debt of the venture (Tr. 1073, 1166). No other terms which are typically indicated in a partnership agreement were even discussed, such as what happens on the death of a partner (Tr. 1233). All of these decisions were left entirely up to Mr. Dominguez.

163. Ms. Ornelas and Ms. Herrera had not even spoken to each other until the date of the hearing (Tr. 1195), and there had been no partnership meetings or telephone conferences between the partners concerning the partnership business (Tr. 1122, 1195). Neither person had any input concerning the decision to establish the Executive Committee which is charged with running the station (Tr. 1176, 1232), and both testified that they did not discuss their proposed management positions with anyone, including Mr. Dominguez (Tr. 1164, 1189-92, 1205-06, 1226-27). Ms. Ornelas first learned of her position as Public Affairs Director from reading Buenavision's integration statement after it had been filed (Tr. 1191, 1206-07). Ms. Herrera learned of her position as Community Affairs Director in the same manner (Tr. 1226).

164. The record demonstrates with great clarity that Ms. Ornelas and Ms. Herrera are nothing more than nominal partners with no influence or control over the partnership's business, and that they have not participated in any meaningful way in the partnership's decision making process. Mr. Dominguez has been in complete control of the partnership, and the passive roles which both Ms. Ornelas and Ms. Herrera have assumed in the past makes it very likely that in the future Mr. Dominguez will remain solely in control. At the very most, therefore, Buenavision would be entitled to an integration credit only for Mr. Dominguez.

165. Mr. Dominguez may or may not serve as General Manager (Tr. 1116); he will however, serve as Chief Executive Officer and Chief Financial Officer of the station, devoting a minimum of 40 hours a week to the station. Even though he will continue at the same time to devote between 10 and 20 hours a week to Vanir Research Company (Vanir), a real estate development company (Tr. 1100), there is nothing in the record to refute Mr. Dominguez' claim that he will be able to handle both the commitment to the Channel 30 facility and that to Vanir; and the number of hours that he will continue to devote to

Vanir and the two to three hours to his movie production company Montezuma Esparza (Tr. 1142), do not make his 40-hour commitment to Buenavision unrealistic.

166. Mr. Dominguez, in Buenavision's application for the Channel 30 facility, indicated that he intended to divest himself of his Colton, California and East Los Angeles cable systems or resign his position with Buenavision and place his stock in a blind trust (Tr. 1127). It is clear from his testimony at the hearing that he viewed the trust arrangement as an alternative in the event that he was unable to sell his interests in these cable systems (Tr. 1055-56), and that he viewed the trust as irrevocable (Tr. 1065). His intention was total divestiture (Tr. 1055), and it was timely given with respect to these interests. Sale or the placement of these media assets in a blind, irrevocable trust is a legitimate insulating device. (*See, Attribution of Ownership Interests, supra.*) Therefore, these interests are of no comparative significance. Similarly, he has committed to divest himself of any other present or future media interests. The sole exception is Mr. Dominguez' interest in the Boyle Heights, California cable system. Although Mr. Dominguez views the Los Angeles and Boyle Heights systems as one and the same, they are separate corporate entities. Therefore in the absence of a timely commitment to divest or otherwise insulate that particular media interest, Buenavision must receive a comparative demerit for Mr. Dominguez' interest as of the B cutoff date in the Boyle Heights, California cable system.

167. Mr. Dominguez' interest in the production company, Montezuma Esparza is of no comparative significance. There is no basis in the record to except Mr. Dominguez' interest in Montezuma Esparza from the general rule that a production company is not a medium of mass communications. *See, Morris, Pierce & Pierce, supra.*

#### SSP BROADCASTING, A LIMITED PARTNERSHIP Findings of Fact

168. SSP Broadcasting is a limited partnership existing under the laws of the State of California. SSP is comprised of one general partner, Sandra S. Phillips, and one limited partner, The ARW Company. The officers, directors, and stockholders of The ARW Company are as follows:

Name	Office	Director	% Stock
William A. Robinson	President	Yes	--
Peter Donnici	Vice Pres.	Yes	--
Stephen Schwartz	Sec/Treas.	Yes	--
Larry Hillblom	--	--	100

169. Sandra S. Phillips owns 51 percent of the equity in the partnership and The ARW Company owns 49 percent (SSP Exh. 1).

#### Best Practicable Service

170. Ms. Phillips, the general partner, will be the General Manager of the proposed station, and she will devote a minimum of 40 hours per week to the day-to-day operations of the proposed station. She will perform all those duties which are usual and customary to a general manager (SSP Exh. 1).



171. Ms. Phillips currently resides in San Francisco, California. She has indicated that she will move to San Bernardino, California or a nearby suburb within the primary service area of the station in the event that SSP receives the license for the San Bernardino facility (SSP Exh. 1 at 4).

172. Ms. Phillips claims no prior broadcast experience and she is not a member of a minority group.

#### Diversification of Ownership of Media

173. SSP has no other broadcast interests. Sandra S. Phillips and The ARW Company have no ownership interest in, or control of, any medium of mass communications (SSP Exh. 1).

174. Ms. Phillips is Corporate Secretary of DHL Broadcasting Company (DHLBC). DHLBC is a limited partner in Urban Broadcasting Systems, applicant for new UHF television facilities at Houston, Texas (MM Docket Nos. 82-684 *et al.*). Ms. Phillips is also Secretary of DHL Communications, Inc. (DHLCI), holder of 55 percent of the stock of DHLBC; and Corporate Secretary of DHL Corporation (DHL), of which DHLCI is a wholly-owned subsidiary. She holds no ownership interest in DHLBC, DHLCI, or DHL, and prior to a grant of program test authority, Ms. Phillips will resign her office and sever her connection with DHL Broadcasting Company (SSP Exh. 1).

175. Peter Donnici, Vice President and Director of The ARW Company (ARW), limited partner in SSP, is a director and minority stockholder of DHL and a director of DHLBC. William A. Robinson, President and Director of ARW, is a minority stockholder of DHL and is President, Director and 45 percent stockholder of DHLBC. Larry Hillblom, 100 percent stockholder of ARW, is 46.3 percent stockholder of DHL (SSP Exh. 1).

#### Conclusions of Law

176. When the SSP application was filed, Ms. Phillips was a sole proprietor. It was after the filing of her application that Ms. Phillips entered into a limited partnership with The ARW Company. The Partnership Agreement is evidenced by a three-page Certificate of Limited Partnership which, according to Ms. Phillips, embodies the complete understanding of the parties (TV-30 Exh. 6; Tr. 1305-07). No comprehensive limited partnership agreement exists (Tr. 1306-07). SSP's Certificate of Limited Partnership contains no provision restricting the limited partner or any of its principals from being an employee, agent or consultant to the partnership's proposed station, or otherwise prohibiting the involvement of the limited partner or its principals in the operations of the proposed station. Furthermore, the Agreement is silent as to the financial obligations of the principals, although it appears from the testimony that the parties to the Agreement view Ms. Phillips as having no obligation to make any capital contributions to the venture (Tr. 1291-92). Therefore, there is nothing in the Agreement which would insulate the limited partner from an active role in the affairs of SSP's proposed station, and it must be assumed, in the absence of such a provision, that a limited partner with considerable equity in the venture as well as virtually the entire financial burden for the enterprise, will seek an active role in running the station. Ms. Phillips, nevertheless, claims a 100 percent quantitative integration credit.

The facts and simple logic do not support such a claim. Absent any inhibiting factor, it is simply not credible that the ARW Company, SSP's limited partner, will forego an active role in managing the affairs of the proposed station. Ms. Phillips, therefore, is entitled to only a 51 percent full-time quantitative integration credit, representing the total amount of her equity interest, which is qualitatively enhanced by her decision to move to San Bernardino, California in the event that SSP is the successful applicant.

177. SSP, Sandra S. Phillips and the ARW Company have no ownership interest in, or control of any medium of mass communications. A pending application is not considered to be a media interest.

#### GOOD NEWS BROADCASTING NETWORK Findings of Fact

178. Good News is a California limited partnership. The general partner and 10 percent owner is Good News Broadcasting Network, Inc., a California nonprofit corporation. The partnership's 90 percent owner and limited partner is Elias Malki Middle East Gospel Outreach, also a California nonprofit organization. The Reverend Elias Malki is the limited partner's president (SSP Exh. 6).

179. The general partner has three directors: Rebecca Ekizian, Viola Douglas, and Shirley Robbins. The directors also serve as officers of the general partner. Rebecca Ekizian is President, Viola Douglas is Treasurer, and Shirley Robbins is Secretary (Good News Exh. 4).

#### Best Practicable Service

##### Rebecca Ekizian

180. Ms. Ekizian lived in San Bernardino as a child. At the time of the hearing, Ms. Ekizian was living in Clovis, California. She presently resides in Upland, California, but will relocate to San Bernardino and reside there on a full-time basis if Good News' application is granted (Good News Exh. 3; Petition for Leave to Amend filed by Good News on September 10, 1985, received by Order, FC 85M-4167, released October 25, 1985). Ms. Ekizian will serve as the station's full-time President and General Manager (Good News Exhs. 3, 4).

181. Ms. Ekizian has taken courses in broadcasting and journalism. She presently works as a free-lance writer and translates English language programming into Arabic. She also serves as a volunteer secretary for the CBN television network's Freedom Council (Good News Exh. 3).

182. Ms. Ekizian claims 12.5 percent American Indian parentage (Good News Exhs. 3, 4).

##### Viola Douglas

183. Ms. Douglas is Good News' proposed full-time, minimum of 40 hours a week, Public Affairs Manager and Chief Financial Officer (Good News Exh. 1).

184. Ms. Douglas has lived in San Bernardino for the past 37 years and she will continue to reside in the city if the license if Good News is the successful applicant (Good News Exh. 1).

185. Ms. Douglas' community and civic activities in the San Bernardino area consist of doing volunteer work for local churches and other religious organizations (Good News Exh. 1).